Annual Report

1988

L'A COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

THE MANITOBA
HUMAN RIGHTS
COMMISSION

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DROITS DE LA PERSONNE
DU MANITOBA

THE MANITOBA
HUMAN RIGHTS
COMMISSION

1988 Annual Report

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90-00805/

Cover: The theme of our front cover is the 40th Anniversary of the Universal Declaration of Human Rights.

The logo, which was produced by the Human Rights Directorate of the Secretary of State Canada, signifies the 40 years of work and progress made in human rights since 1948. The light and warmth from the rising sun represent the dawn of a new day, and the hope that Canadians, united in their acceptance of the principles of the Declaration, can continue to work together for equality, peace and justice for all.

The eternal flame surrounded by a wreath of laurel leaves is the United Nations symbol for Human Rights. It links Canada's celebration of the 40th Anniversary to that of the international community. It portrays the universal desire for basic human rights for all humanity, and the efforts we must all make to fulfill the ideals of the Declaration.

Manitoba

Attorney General

Room 104
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

His Honour,
The Honourable George Johnson, M.D.,
Lieutenant Governor of Manitoba.

Sir:

May it please your honour, it is my pleasure to present to your Honour the Annual Report of The Manitoba Human Rights Commission for the year 1988.

James C. McCrae

LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

THE MANITOBA HUMAN RIGHTS COMMISSION

The Honourable James McCrae

Attorney-General

Legislative Building

Winnipeg, Manitoba

R3C 0V8

Sir:

We are pleased to forward to you, the Minister responsible for administration of the Manitoba Human Rights Code, the Annual Report of the Manitoba Human Rights Commission for the calendar year ending December 31, 1988.

Kenneth Filkow, Q.C.
Chair

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The Function of the Manitoba Human Rights Commission

The Universal Declaration of Human Rights declares that: "All human beings are born free and equal in dignity and rights." In Manitoba, this ideal has been translated into law by *The Human Rights Code,* a provincial statute which prohibits discrimination on the basis of ancestry, nationality, religion, sex, age, disability, or other group stereotypes.

The Manitoba Human Rights Commission is the agency responsible for carrying out the provisions of *The Human Rights Code.* The Commission is authorized by *The Code* to accept and investigate complaints of discrimination and to attempt to settle substantiated complaints; to carry out educational activities, and to issue binding advisory opinions. Through these activities, the Commission attempts to reduce discrimination and promote social change leading to equal opportunity for all.

All services provided by the Commission are available to the public without charge.

Enforcement

The Human Rights Code prohibits unreasonable discrimination which is based on group characteristics such as ancestry, nationality, ethnic origin, religion, age, sex, pregnancy and other gender-determined characteristics, sexual orientation, marital or family status, source of income, political belief, and physical or mental disability.

The jurisdiction of the Human Rights Commission is restricted to matters within the constitutional authority of the provincial legislature. Most activities carried on in the province fall within provincial jurisdiction. However complaints against certain federally regulated enterprises, such as airlines, railways and the federal civil service, should be filed with the Canadian Human Rights Commission (telephone 983-2189). The staff of either Commission will answer any questions regarding the appropriate jurisdiction to deal with a particular complaint.

Complaints of Discrimination:

Any person who believes that someone has contravened a provision of *The Human Rights Code* is invited to contact one of the Commission's Intake Counsellors and discuss his or her concerns. All calls are confidential and the Commission will not act without the caller's consent. If the issue falls within the jurisdiction and scope of *The Code*, the details of the allegation are recorded and the Counsellor arranges an appointment to meet with the complainant to obtain a signed Complaint of Discrimination. A copy of this form is included as Appendix B.

After the complaint is filed, the signed complaint form is served (generally by mail) on the party who has been accused of the discriminatory behaviour (the respondent), and he or she is invited to provide a formal reply to the allegations.

As soon as possible, an officer is assigned to conduct a thorough investigation of the allegations and the response. At this stage, it is the investigating officer's responsibility to determine the facts of the case and to ensure that the rights of both parties are fully protected. On conclusion of the investigation, the findings are assessed. If the allegation is not supported by the evidence, the complaint is dismissed. If it appears to be justified, attempts are made to resolve the matter through conciliation.

Conciliation is a process common to most Canadian human rights complaint procedures. This allows for complaints to be voluntarily resolved by the parties concerned without adjudication. All matters related to the conciliation stage are confidential and without prejudice. In this stage, the officer will mediate between the parties, ensuring that they fully understand the process and are able to make informed decisions regarding the initiation or acceptance of any settlement proposal.

Should a complaint not be resolved during the conciliation stage, the board of Commissioners may determine that the matter should be decided by an impartial Adjudicator.

The Adjudicator is appointed by the Attorney-General to hold a formal public hearing. All parties to the complaint are invited to present their arguments. Witnesses may be called and are subject to cross-examination. The Commission has the carriage of the complaint and is represented by legal counsel. The respondent and the complainant may also be represented by legal counsel if they wish.

If the Adjudicator, after hearing all the evidence, rules that a contravention of *The Human Rights Code* has occurred, he or she has the authority to make an order requiring the respondent to comply with *The Code*; to provide the denied service, employment, or housing; to pay lost wages or out-of-pocket expenses incurred by the complainant; or to pay other damages as may be deemed appropriate by the Adjudicator. If there has been evidence of an ongoing practice of discrimination, the Adjudicator may order the respondent to implement an affirmative action plan or other special program

and may direct the Commission to assist in the supervision or implementation of the program.

If any party disagrees with an Adjudicator's decision, he or she may apply to the Court of Queen's Bench for a review of the order within the time limit set out in *The Code*. In some cases, the matter may be appealed to the Manitoba Court of Appeal and even to the Supreme Court of Canada.

With the consent of the Attorney-General, criminal proceedings may be launched in certain cases where criminal prosecution for violation of *The Code* appears appropriate. If a person is found guilty in these proceedings, he or she may be subject to a fine of not more than two thousand dollars for an individual or ten thousand dollars for a corporation.

A chart of the Usual Steps in Processing Complaints can be found at the end of this section.

Advisory Opinions:

To assist the person who feels obliged to consider certain group characteristics when making business decisions but who wishes to ensure that the distinction is not discriminatory, *The Human Rights Code* has provided for binding advisory opinions to be issued by the Manitoba Human Rights Commission.

Any person who is responsible for the implementation of a practice or activity which is within the jurisdiction of *The Code* may apply for an advisory opinion. (An application form may be obtained from any of the offices of the Commission.) When the application is received, it will be assessed to ensure that an advisory opinion would be appropriate and any concerns in this regard will be discussed with the applicant.

As soon as possible, the application will be assigned to an officer who will carry out further research as required. This may include interviews with the applicant or other persons knowledgeable about the issues involved. The results of this research will be discussed with the applicant who will be given the opportunity to revise or modify the proposed practice or activity to bring it into compliance with *The Code*. At the conclusion of this process, the Commission may issue a formal and binding advisory opinion. The opinion will include a full description of the practice or activity and will contain the reasons for the determination.

If an advisory opinion states that a practice or activity is not contravening *The Human Rights Code*, no Complaint of Discrimination will be acted upon by the Commission as long as the opinion remains in effect.

In general, an advisory opinion will remain in effect for as long as the fact situation upon which it is based remains accurate. The Commission may, however, revoke or modify an advisory opinion for other reasons, such as precedent-setting rulings by a Board of Adjudication or the Courts. When an opinion is to be revoked or modified, it remains in effect until the Commission formally notifies the business or organization who requested the opinion.

If any person believes that an advisory opinion issued by the Commission is inappropriate, he or she may request that the opinion be revoked or modified. The Commission will consider such requests and take the appropriate action.

All advisory opinions issued by the Commission will be accessible to the public for inspection and will be reported in the annual report of the Commission.

Education

It has long been understood by human rights practitioners that discrimination cannot be overcome by relying totally on the resolution of individual complaints. While persons who have been subjected to illegal discrimination must certainly have access to the remedies to which they are entitled under the law, there are some discriminatory practices which are more effectively dealt with through other means.

For example, there are many instances of illegal discrimination which are not brought to the attention of the Commission. Sometimes the victim may not be aware of his or her rights to a remedy under the law or may choose not to complain for a variety of reasons. In addition, negative and hostile attitudes based on prejudice and stereotypes often arise in situations which are beyond the jurisdiction of human rights legislation. Children taunt each other in the streets and playgrounds with racial slurs; people are humiliated and embarrassed when confronted with bigotry and prejudice in social settings or in public places; and neighbourhoods are torn apart by racism and intolerance.

The Supreme Court of Canada has, on numerous occasions, noted the special nature of "discrimination" as a legislatively prohibited activity. It has stated that the legislation is intended to be "remedial" rather than "punitive" and emphasized that the primary function of the Human Rights Commission is to change public behaviour and attitudes. In this context, the importance of the educational and persuasive role of the Commission is clearly evident.

The Human Rights Code acknowledges that a combination of approaches is necessary to effectively combat discrimination and its immediate and historical effect, and mandates a variety of activities.

In addition to the requirement that the Commission accept and investigate formal complaints and issue advisory opinions, Section 4 of *The Code* states that the Commission is required to carry out programs which will forward the principle that every person is free and equal in dignity and rights, promote an understanding of and compliance with *The Code*, and ensure that the residents of Manitoba understand their civil and legal rights.

The limited resources available for public education require the establishment and continuous review of priorities to form the basis of program planning. The Commission has set out its current policy in a Public Education Policy (see Appendix C).

Speaker Services Program:

The Commission's education activities include speaker services through which Commissioners and members of the staff are available to speak to groups about the rights and responsibilities described in *The Code* or any other topic related to human rights. Persons wishing to utilize the speaker service should contact the Human Rights Intake Counsellor.

This program also includes outreach and other public relations activities intended to maintain an ongoing liaison with various sectors of the community, and to assist and encourage community initiatives in activities designed to further the principles of human rights.

Special Projects:

The Commission develops and conducts a wide variety of special education projects such as seminars, workshops, and contests. Other projects may involve the development of publications to inform the public about the work of the Commission and the rights and responsibilities set out in *The Human Rights Code*. These and other publications and audio-visual materials are loaned or distributed free of charge to the public.

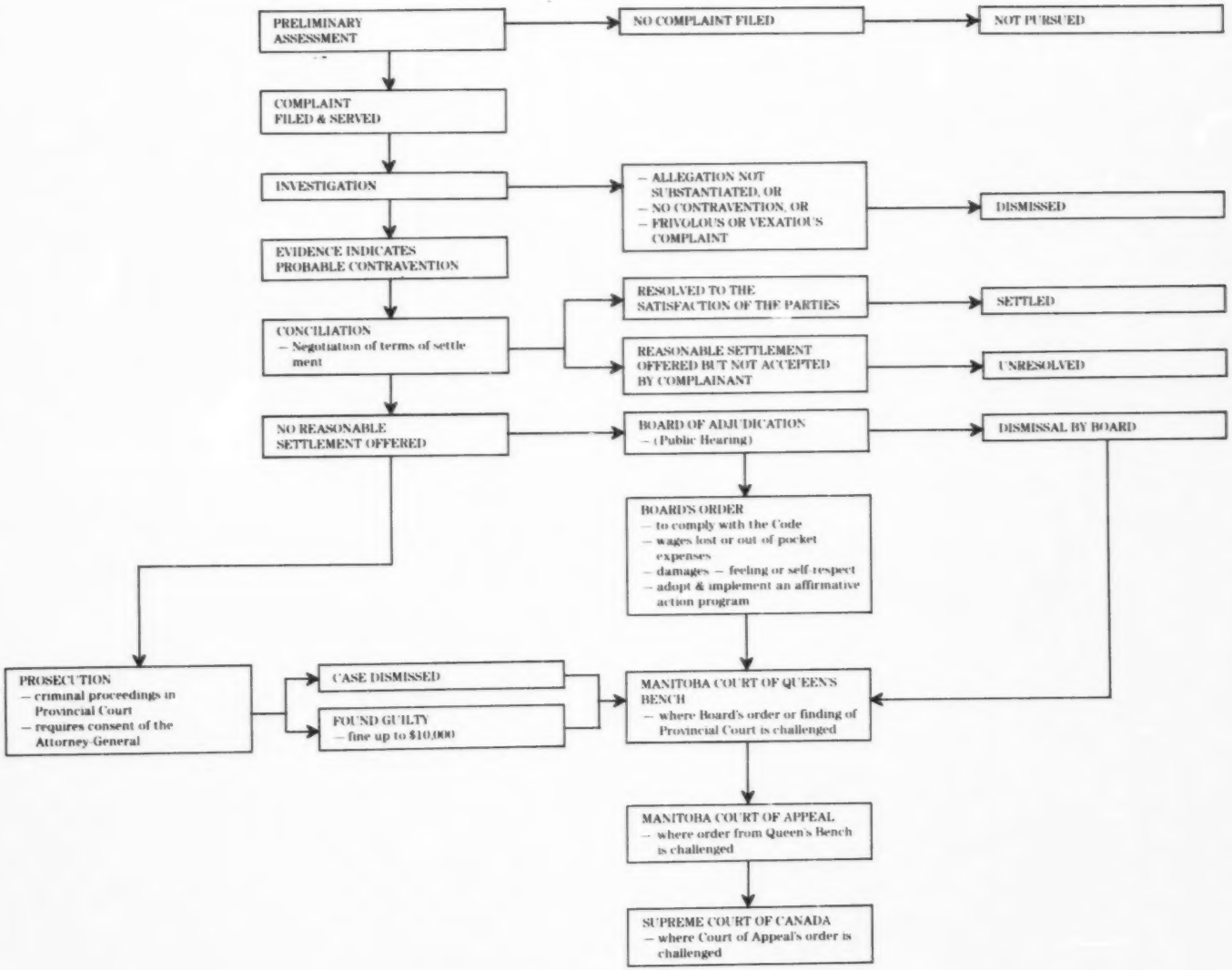
National and International Liaison

The Manitoba Human Rights Commission is a member agency of three national and international organizations concerned with human rights. These are the Canadian Association of Statutory Human Rights Agencies (CASHRA), the International Association of Official Human Rights Agencies (IAOHRA), and the National Association of Human Rights Workers. Through membership in these organizations the Commissioners and staff are able to keep informed about recent developments in the field of human rights law and education and are able to participate in various staff development and training opportunities. Membership also facilitates the contribution of the knowledge gained from our own experiences and insights to the evolution of human rights theory and legislation.

Another important national organization is the Continuing Federal/Provincial/Territorial Committee of Officials Responsible for Human Rights. This Committee consists of government representatives and is responsible for monitoring Canada's compliance with the various international conventions relating to human rights to which Canada is a party. Through the Committee, new and emerging human rights issues are brought to the attention of Ministers Responsible for Human Rights from all Canadian jurisdictions at regular Ministerial Conferences.

Although the Commission is not formally connected with the Committee, the Executive Director has been designated by the Attorney-General to provide assistance and backup to the Government of Manitoba's official representative. The Commission also contributes to the work of this committee by taking responsibility for the preparation of reports to the United Nations on such matters as the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Elimination of Racial Discrimination, and on activities related to the celebration of Human Rights Day (December 10th) in the Province of Manitoba.

Usual Steps in Processing Complaints


PRELIMINARY ASSESSMENT
NO COMPLAINT FILED
NOT PURSUED
COMPLAINT FILED & SERVED
INVESTIGATION
– ALLEGATION NOT SUBSTANTIATED, OR
– NO CONTRAVENTION, OR
– FRIVOLOUS OR VEXATIOUS COMPLAINT
DISMISSED
EVIDENCE INDICATES PROBABLE CONTRAVENTION
RESOLVED TO THE SATISFACTION OF THE PARTIES
SETTLED
CONCILIATION
– Negotiation of terms of settlement
REASONABLE SETTLEMENT OFFERED BUT NOT ACCEPTED BY COMPLAINANT
UNRESOLVED
NO REASONABLE SETTLEMENT OFFERED
BOARD OF ADJUDICATION
– (Public Hearing)
DISMISSAL BY BOARD
BOARD'S ORDER
– to comply with the Code
– wages lost or out of pocket expenses
– damages – feeling or self-respect
– adopt & implement an affirmative action program
PROSECUTION
– criminal proceedings in Provincial Court
– requires consent of the Attorney-General
CASE DISMISSED
FOUND GUILTY
– fine up to $10,000
MANITOBA COURT OF QUEEN'S BENCH
– where Board's order or finding of Provincial Court is challenged
MANITOBA COURT OF APPEAL
– where order from Queen's Bench is challenged
SUPREME COURT OF CANADA
– where Court of Appeal's order is challenged

Personnel

The Manitoba Human Rights Commission consists of two components. One component is the board of Commissioners, chosen from the public at large by the Lieutenant Governor-In-Council. The board meets on a monthly basis and is responsible for the policies and general direction of the Commission. The second component is the civil service staff, which carries out the day-to-day activities of the Commission.

The Responsibilities of the Board of Commissioners

Commissioners are selected from various geographic, cultural, social, and economic sectors of the province. They are appointed for three year terms, and serve on a part-time basis. There are thirteen Commissioners, one of whom is the Chairperson and another the Vice-Chairperson.

The board of Commissioners establishes the policies which determine the manner in which the professional staff administer the programs and activities of the agency. It is also the function of the board to determine the appropriate disposition of all complaints, and to issue binding advisory opinions.

One point that should be stressed is that neither the staff nor the board of Commissioners has the authority to order compensation or remedies for persons who feel they have suffered as a result of discrimination. If it appears that *The Code* has been violated and efforts to reach a mutually agreeable settlement have been unsuccessful, the only further action which may be taken by the Commission is to request the Attorney-General to appoint an impartial adjudicator to hear the matter and make an appropriate order. Where a criminal prosecution for violation of *The Human Rights Code* appears to be appropriate (not a common occurrence) the Commission may recommend that the Attorney-General commence a prosecution.

The Duties of the Staff

Human rights work is a demanding profession. Human rights professionals are constantly placed in sensitive situations, and they must bring to their work a wide variety of skills. They are required to be effective listeners and to have the ability to relate to persons from varied backgrounds, while maintaining neutrality and objectivity.

The Intake Counsellors respond to all inquiries from the public and will assist in the filing of formal complaints. They will accept requests for speaker services, provide information regarding other services of the Commission, and assist callers to reach appropriate alternate agencies if *The Human Rights Code* does not appear to be applicable. When workloads permit, intake staff will also assist in the development and delivery of educational programs and services.

The Human Rights Officers conduct the investigation and conciliation of complaints, the assessment of advisory opinion applications, and a variety of educational activities. Officers assigned to the Public Programs Unit are primarily responsible for education and will work with business, community groups, and other institutions and organizations in the delivery of human rights education programs. Officers assigned to the Compliance Unit are primarily responsible for complaints and advisory opinions. Coupled with investigative skills, these officers must also be able to negotiate settlements between often hostile parties without compromising the intent of *The Code*.

The quality and efficiency of the work carried out by the Commission is greatly enhanced by a small complement of competent and dedicated support staff who provide the necessary administrative support services.

In each of the Commission's regional offices, the Regional Human Rights Officer investigates and conciliates complaints, conducts educational activities, and supervises the general administration of the office. In The Pas, the Intake Clerk responds to inquiries and accepts complaints, and provides clerical and secretarial support services. The Regional Human Rights Officer in Brandon is assisted by a secretary.

The staff work under the direction of the Executive Director, who is responsible to both the board of Commissioners and the Department of the Attorney-General for the effective operation of the Commission.

The Commissioners

Chairperson:
Kenneth Filkow. Q.C.

Commissioners: (As at December 31, 1988)

		Term Expires
Kenneth Filkow, Q.C.	Chairperson	1991
Molly Robinson	Vice-Chairperson	1991
Marianne Bossen	Commissioner	1989
Francesco Grande	Commissioner	1989
Marion Robinsong	Commissioner	1989
Kue Young	Commissioner	1989
Brigitte Graba	Commissioner	1990
Socorro Juan	Commissioner	1990
Lorraine Sigurdson	Commissioner	1990
Amarjeet S. Warraich	Commissioner	1990
Robert Laine	Commissioner	1991
Polly Pow	Commissioner	1991
Ed Wood	Commissioner	1991

Minister:

The Honourable James C. McCrae,
Attorney-General

The Commissioners:

KENNETH FILKOW, Q.C. — Chairperson

Kenneth Filkow has been a practising lawyer in the City of Winnipeg since 1966. Spanning the years he has represented litigants in many trials in which civil, human and economic rights or positions have been an issue. He has also presided as an arbitrator determining such matters. He is a past member of the Board of Directors of Legal Aid Manitoba and past Chairperson of the Civil Justice & Criminal Justice divisions of the Manitoba Bar Association.

MOIRA (MOLLY) ROBINSON — Vice Chairperson

Molly Robinson is the Chief Executive Officer for the Thompson YWCA, which serves Thompson and the region. She has resided in that city for 25 years and has been instrumental in the founding of many services, organizations and facilities for her community. She has served on local, regional, provincial and national boards at the executive level. Ms. Robinson, currently a City Councillor completing her second term, is also a published poet, artist and writer. This is her second appointment to the Human Rights Commission, having served from 1978 to 1981.

MARIANNE BOSSEN

Marianne Bossen, M.A. (Econ.) is a Consultant on Employment and Social Policy. She has pioneered research into equal opportunities for women in employment. In recent years, prompted by personal experience with disability, she has become involved in the concerns of physically handicapped persons. She serves on the Board of Management of the Canadian Paraplegic Association (Manitoba Division).

BRIGITTE GRABA

Brigitte Graba has worked at Rossbrook House in the core area of Winnipeg since 1983. Her main concern is youth employment and she has been active in both the Summer Employment Action Committee and Fair Action for Community Employment. Ms. Graba is currently a member of the board of the North End Women's Centre and a volunteer of the Networking Committee of the German Canadian Congress.

FRANCESCO (FRANK) GRANDE

Frank Grande, an owner/manager of Delgran Real Estate, is Past-President of the Italian Canadian League of Manitoba. He is an active member of various commuity groups and has served as Vice-Chairperson of the Manitoba Advisory Council on Immigration and Ethnic Relations, member of the Board of the Italia Credit Union and representative for the Italian community on the Manitoba Intercultural Council.

SOCORRO (CORY) JUAN

Cory Juan is a teacher in Winnipeg School Division No. 1. She is presently active in the Maples Community Club Fund Raising and St. Peters Catholic Church Council. Ms. Juan is a Seven Oaks Filipino Parents Council Advisor, Secretary of Timpuyog T. Ilokano Ditoy Manitoba and Past President of the Manitoba Association of Filipino Teachers Inc.

BOB LAINE

Bob Laine is General Manager of 1290 FOX and Q-94FM radio stations. He is 1st Vice President and Telethon Chairman of the Variety Club of Manitoba, has served on the Board of Kinsman Reh-Fit Centre and is past-President of the Broadcasters Association of Manitoba. Mr. Laine also serves many broadcast related industry associations.

PAULETTE (POLLY) POW

Polly Pow was born in Shoal Lake and raised in Gimli and Brandon. She received her B.A. from Brandon University. Ms. Pow is an active member of the community and has participated on various boards and Committees. Professionally, she has worked in areas dealing with wife abuse, crisis housing, childcare, counselling and parole. Her volunteer work has primarily centered around organization fund raising.

MARION ROBINSONG

Marion Robinsong, born and raised in Brandon, Manitoba, is a Resource Teacher with the Brandon School Division. She holds Bachelors degrees in Arts and Education from Brandon University and also attended the University of Santa Barbara for a post-graduate year of Studies in Education. She is active in many organizations involved with human rights, personal counselling, improved parenting and home schooling as well as the Manitoba Association of Resource Teachers.

LORRAINE SIGURDSON

Lorraine Sigurdson has been employed by the Canadian Union of Public Employees for over two years and is currently Acting Equal Opportunities Representative. Previously, she was President of CUPE Local 1550 at the Health Sciences Centre and Secretary of the Manitoba Division of CUPE. Ms. Sigurdson's work currently focuses on issues such as affirmative action and pay equity.

AMARJEET S. WARRAICH

Amarjeet Warraich was born in Punjab, India and migrated to Winnipeg in 1972. He is dedicated to the cause of human rights and is actively involved in various cultural and community organizations. Mr. Warraich is Vice-President for the Manitoba Region and the Winnipeg Chapter of the National Association of Canadians of Origins in India and is also a member of the Multicultural Advisory Council.

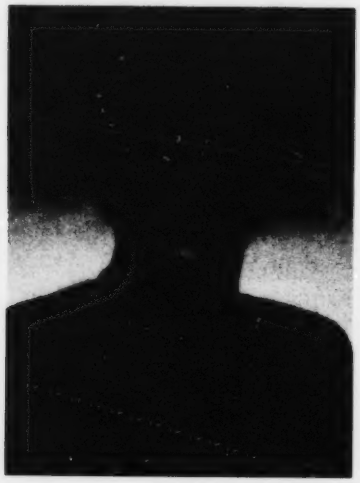
ED WOOD

Ed Wood was born in St. Theresa Point, Manitoba and graduated from the Manitoba Technical Institute in 1956. He was employed with The Hudson Bay Company and both the Ontario and Manitoba Provincial Governments before starting his own building material supply company in 1974. Mr. Wood is active in a variety of business associations, church and other community groups.

T. KUE YOUNG

Kue Young, M.D., M.Sc., FRCP(C), has lived in Canada since 1966 and is an Associate Professor in the Dept. of Community Health Sciences at the University of Manitoba. He has worked as a general practitioner in Saskatchewan, a C.U.S.O. volunteer in Tanzania and a public health administrator of Indian Health Services in Northwestern Ontario. Dr. Young's research interests are in the health impact of social change among rural peoples in Northern Canada and in developing countries.

The Staff (As at December 31, 1988)



Executive Director:
Durlene Germscheid

Administrative Support Services

Administrative Officer:
Linda Kopys

Administrative Secretaries:
Frieda Brandt
Donna Harland
Donna May
Jeannette Roque
Maureen Sorokowski

Public Programs

Education Officers:
Judith Burch
Victor Schwartzman
Stan Wood

Intake Counsellors:
Barbara Delorme
Derek Legge

Compliance

Director of Compliance:
Mariann Burka

Team Supervisors:
Buelah Blake
Sharon Wickman

Enforcement Officers:
Debra Beauchamp
Patrick Daly
Katherine Fraser-Hominick
Nancy Flintoft Meronek
Patricia St. Loe
Asfia Sultan
Kenneth Swain

The Pas Office

Regional Human Rights Officer:
Ronald Chief

Regional Intake Officer:
Elizabeth Bennett

Brandon Office

Regional Human Rights Officer:
Peggy Pchajek

Regional Secretary:
Isobel Michie

Legal Counsel:
Aaron Berg
Civil Litigation Branch
Dept. of Attorney-General

An Overview of 1988 Activities

Nineteen eighty-eight contained two important human rights anniversaries. Human Rights Day, December 10th, marked the 40th Anniversary of the signing of *The Universal Declaration of Human Rights*. Throughout the year, the Manitoba Human Rights Commission worked with many other groups and individuals in all regions of the Province to bring about a variety of events to celebrate this major milestone in human rights history. At a conference of Ministers Responsible for Human Rights from all jurisdictions in Canada, the Attorney General of Manitoba contributed to the celebrations by joining with his colleagues to sign a proclamation reaffirming the fundamental principles of human rights set out in the Universal Declaration.

December 10, 1988 also marked the first anniversary of the proclamation of *The Human Rights Code* (replacing *The Human Rights Act*). New procedures which had been adopted to facilitate the administration of *The Code*, were tested and refined throughout the year. The new legislation contains many provisions which have expanded or modified the scope of human rights protections in Manitoba, and the Commission's first year of experience with these new provisions has brought about an awareness of the need for an increased emphasis on training and policy development.

In addition to the experience of new legislation, the Commission was affected by several other events which occurred over the course of the past year, beginning in March with the resignation of Commission Chairperson, Claudia Wright. As the vacancy was not filled for several months, Vice-Chairperson Marek Debicki assumed the responsibilities of Acting Chairperson in the intervening period. In April, the province elected a new government and the Commission reported to a new Attorney General, the Honourable James McCrae. At the end of June, the Winnipeg office of the Commission moved into new facilities at 259 Portage Avenue; and July appointments to the board of Commissioners included the appointment of a new Chairperson and Vice-Chairperson.

As 1988 drew to a close, both staff and commissioners had adjusted well to these changes and were heavily involved in the continuation of efforts to increase the effectiveness and efficiency of the Commission's programs and services.

Personnel Changes

Commissioners

Five members of the board of Commissioners left the Commission in 1988. As previously stated, Claudia Wright vacated her position as Chairperson and the expiry of four other terms resulted in the loss of commissioners, Marek Debicki, Wayne Courchene, Raj Mehta, and Helen Warner.

Ken Filkow was appointed to the Commission as the new Chairperson, and another new appointment, Molly Robinson, was designated as Vice-Chairperson. The appointments of Bob Laine, Polly Pow, and Ed Wood filled the remainder of the terms which had expired in 1988. A vacancy which had been carried over from the previous year was filled with the appointment of Amarjeet Warraich for a two year term to expire in 1990.

Staff

The Commission suffered a reduction in secretarial services during 1988 when Lora Kirby, who had been with the Commission on secondment, was transferred elsewhere in government.

One employee, Human Rights Officer Roger Young, resigned during 1988 and this position was subsequently filled by Asfia Sultan. In the 1988-89 budget, an additional Human Rights Officer was allocated to the Commission to carry out compliance activities. This position was filled in November by Paddy St. Loe.

Human Rights Officer Barbara Delorme requested reassignment to Intake Counsellor, a position she had filled previously. This paved the way for the promotion of Katherine Fraser-Hominick from Intake Counsellor to Human Rights Officer.

Compliance Activities

During 1988, compliance staff assumed an additional responsibility, the assessment and processing of applications for advisory opinions. This activity stems from a new provision of *The Human Rights Code* which allows employers, rental agents, and other persons responsible for activities within the jurisdiction of *The Code* to obtain binding advisory opinions as to whether their practices are in compliance with the legislation. By requesting an advisory opinion, businesses or organizations are able to ensure, in advance, that their business practices are not discriminatory and thereby avoid the discovery, through a complaint investigation, that they have inadvertently contravened the legislation and are therefore subject to the financial and public relations costs often associated with human rights violations. Through the provision of advisory opinions, the Commission is able to work with employers, rental agents, service providers and others to identify and remove discriminatory business practices before they are implemented. The Commission welcomes the opportunity to utilize this preventative approach to bring about compliance with the letter and spirit of *The Code*.

The volume of requests for advisory opinions was, as expected, equivalent to a full case load for a human rights officer. In response to the anticipated workload increase, the Government allocated an additional position to the Commission in the 1988/89 fiscal year. This position was filled in December.

During 1988, the addition of advisory opinions to the compliance case load was offset by a reduction of formal complaint files opened, so that the total number of new compliance files (complaints and advisory opinion applications) was relatively similar to that of the previous year and, with fewer staff vacancies, compliance staff were able to close almost 10% more files than in 1987. Unfortunately, these factors were not sufficient to close the gap between intake and closure rates. With a total of 292 new compliance files and only 257 closures, the overall case load has grown by 35 files. With the addition of another human rights officer to assume a case load of active files, the backlog is expected to remain relatively stable.

The backlog of unassigned complaints remains a matter of serious concern to the Commission. One of the most readily observable consequences of the delays in assignment is the increase in the number of withdrawn complaints caused by loss of witnesses or evidence and by the frustration of complainants. The proportion of complaint withdrawals has grown consistently over the past few years and now represents approximately 30% of closed cases.

The Commission has continued to examine its procedures and to explore new methods of improving efficiency. In this regard, changes have been implemented in the preliminary phase of complaint development. Under the new procedures, the complaint is served and the respondent invited to submit a reply to the complaint before the case leaves the preliminary phase. This has resulted in greater efficiency in the investigative process by assisting in the preservation of relevant evidence. The written respondent reply has been a particularly valuable tool to both parties as well as to the Commission by identifying facts in agreement and dispute early in the complaint process, thereby narrowing the scope of the investigation required.

While efforts to reduce the backlog of unassigned cases will continue, the Commission has recognized the need to attempt to minimize the impact of the delays in assignment which are currently unavoidable. The effect of delay in each case will vary and, in the interests of fairness, must be assessed on a case by case basis. For example, the deteriorating health of a person with AIDS could render a remedy meaningless if awarded too late to be of practical benefit. The loss of a key witness could mean the difference between a substantiated complaint and a dismissal due to insufficient evidence. For these reasons, the Commission has articulated a policy setting out criteria for the determination of priority assignments, recognizing that, in exceptional cases, priority is not only warranted, but necessary. The implementation of this policy aims to achieve fairness by assessing the impact of delay on each individual complaint and weighing carefully any resulting prejudicial impact of the remaining unassigned cases.

Training continued to be a major activity in 1988 with the employment of new compliance staff to fill vacancies in existing positions and to fill the new position which was allocated to the Compliance Unit. The necessity of training for new staff coincided with the need to update current officers and these objectives were combined to permit joint and separate training to all staff in the Unit on a range of areas of human rights law. The provision of professional training and development is especially important in the field of human rights which is rapidly expanding through both legislation and judicial interpretation.

The interpretation of Manitoba's human rights legislation was not tested through adjudication in 1988. This was due, in part, to new provisions of *The Code* which required that adjudicators be appointed from a predesignated Panel of Adjudicators and the subsequent delay in the appointment of the panel members. Some complaints slated for adjudication had to be held in abeyance pending the establishment of the panel. As this has now taken place, it is anticipated that these complaints will be heard in the coming year.

A number of other cases have been held in abeyance pending the outcome of two precedent Manitoba cases which are before the Supreme Court of Canada concerning sexual harassment and discrimination based on pregnancy. (Govereau and Janzen vs. Platy Enterprises Limited, and Brooks vs. Canada Safeway Limited.) The decisions of the Supreme Court in these cases, which are anticipated shortly, will resolve the stalemate of several open complaint files which are based on similar issues and which were also filed under the former *Human Rights Act*.

Detailed reports of legal proceedings, and statistical information on the compliance activities of the Commission can be found elsewhere in this report.

Special Programs

The Legal Proceedings section of this report contains an account of the case of Obirek, Apsit and Gaffrey vs. Manitoba Human Rights Commission. This matter involved a challenge to the Commission's approval of a plan by the Government of Manitoba to give preference to Native Indians in the granting of licenses for the farming of wild rice. Mr. Justice Simonsen, in a

decision rendered in 1987, ruled that the plan did not comply with Section 15(2) of *The Charter of Rights* and that, if an affirmative action program failed to comply with *The Charter*, it could not be permitted by other legislation such as *The Human Rights Act*. He therefore declared the Commission's approval of the program to be null and void. Although the Manitoba Court of Appeal subsequently ruled that, for procedural reasons, Mr. Justice Simonsen's order could not stand in any event, the case has demonstrated the fact that Commission decisions with respect to affirmative action programs can and will be challenged.

The language of the new *Human Rights Code*, in defining affirmative action and other special programs, now parallels that of *The Charter* and does not contain the same provisions for approval of special programs which were contained in *The Act*. It does, however, authorize the Commission to issue binding advisory opinions which would have a similar effect to that of the previous approval process. The Commission is also required to accept and investigate complaints which may be filed against special programs. In order to ensure that advisory opinions and complaint dispositions accurately reflect the letter and intent of the law, the Commission's level of expertise in this area must be maintained at the highest possible level.

The Code also requires the Commission, when considering such programs, to consider whether the program is "reasonably likely to achieve" its objective. Such decisions require considerable knowledge of all aspects of the development and implementation of affirmative action plans and programs and, in this area as well, new challenges are being raised. The traditional affirmative action model, geared to bring about proportional representation of target groups in a designated workforce, has been effective in bringing about increased equality for women, Natives, and visible minorities; however, when these programs have been expanded to include disabled persons, new problems arise. Employers and persons with disabilities have expressed concern about the difficulties which arise when attempting to develop the statistical data which is necessary for the planning and evaluation of such programs. Definitions of terms such as "disability" and "disabled persons" are troublesome because of the variety of physical and mental conditions which may result in some degree of disability in a work environment. Concern has also been expressed about the labelling effects of this aspect of the model which, it is argued, may promote stereotypes rather than eliminate them.

The Commission launched two major projects in 1988 which were intended to increase its knowledge and expertise and to enable it to respond effectively to these new challenges.

With the assistance of a special research grant from the Government of Manitoba, a leading expert in the field has been commissioned to conduct research and produce a discussion paper exploring potential new approaches to the implementation of affirmative action programs for disabled persons. The paper is expected to be ready early in the new year and it is the intention of the Commission to utilize the paper as the basis for consultation with the disabled community, employers, and others with particular interest and experience in this area.

The Commission is also exploring the possibility of an extensive training program for both staff and commissioners to focus on affirmative action and its relationship to systemic discrimination.

It is intended that the results of the above activities will be followed up with an extensive review and expansion of the Commission's policies and publications regarding affirmative action and other special programs.

A publication on the subject of guidelines for affirmative action has been under development for some time. A draft prepared in 1987 had to be completely revised to reflect the changes in the legislation resulting from the new *Human Rights Code*. This revision is now complete and, although the Commission anticipates further revisions will be required as an outcome of the research and training activities currently under consideration, the publication will be released early in 1989 as an interim guide for persons who are attempting to implement affirmative action and other special programs.

Comment on its contents will be invited and will be considered in the development of a revised version to be published at a later date.

Educational Activities

The Commission continued to carry out a limited public education program during 1988, conducting 113 speaking engagements and making 89 contacts for the provision of consultant services or for outreach purposes.

One of the objectives of the Commission's education program is to promote the teaching of human rights in Manitoba schools. To this end, a member of the Commission staff participated in a committee for the development of human rights curriculum, and on the Task Force on Race Relations, both in Winnipeg School Division No. 1. Through the assistance of the Student Temporary Employment Program, research was conducted to form the basis of an update to the Commission publication, An Inventory of Human Rights Teaching Materials. The major activity for the year was the continued work on the development of a manual to provide school administrators with guidelines for the administration of schools in keeping with human rights principles.

In the area of business education, priority was given to the revision of the Commission's publications to assist employers, rental agents, and others in the application of the legislation. These revisions were required to reflect the provisions of the new *Human Rights Code*. A series of fact sheets was developed to assist in the interpretation of various aspects of *The Code* and work began on the development of a new publication dealing with employee benefit plans. In order to facilitate further liaison with the business community, the Commission applied and was accepted as a member of the Winnipeg Chamber of Commerce.

In the fall of 1988, the Commission adopted and publicly announced a policy on AIDS and other communicable diseases. The policy addresses the provisions of *The Human Rights Code* which prohibit unreasonable discrimination against persons with AIDS or persons assumed to be in contact with AIDS or its related conditions because of their membership in or association with certain groups. It also provides some explanation of bona fide and reasonable requirements which may, in some circumstances, permit the differential treatment of persons with AIDS or others infected with communicable diseases. Copies of this policy have been distributed widely to employers and others who are responsible for activities covered by *The Code*, and to organizations who are in contact with individuals who may be experiencing this type of discrimination.

Other projects were also initiated to provide information to groups who are likely to experience discrimination and who may, therefore, require the services of the Commission. With the addition of sexual orientation as a prohibited basis for discrimination, work has begun on the preparation of an information kit for gays and lesbians which will explain the nature of the protections against discrimination now available to them. Another project will result in a multilingual brochure to assist new immigrants who have not yet learned either of Canada's official languages. This brochure is expected to be published early in 1989.

Long range planning in the area of public education focussed on the development of action plans for participation in the remainder of the International Decade of Disabled Persons and the Second Decade for Action to Combat Racism and Racial Discrimination. These Decades have been proclaimed by the United Nations and will end in 1992.

In response to the activities of the Task Force on Multiculturalism, the Commission prepared a paper which is intended to form the basis for the future development of a Manitoba Human Rights Commission policy on multiculturalism. At the end of the year, a submission was being prepared for presentation to the Aboriginal Justice Inquiry.

With the current allocation of resources, the Commission is painfully aware of its inability to deliver all of the educational services and programs necessary for effective promotion of human rights principles and protections. Recognizing the need to make a considered assessment of priority areas, a formal public education policy has been adopted by the Commission and will serve as a guideline for education planning in the coming year. This policy can be found in Appendix C of this report.

Human Rights Day

The special significance of Human Rights Day 1988 as the 40th Anniversary of the Universal Declaration of Human Rights was marked by the wide range of activities which took place throughout the province. The Commission joined forces with a number of other organizations to bring about a two day Human Rights Fair located at the University of Winnipeg. Approximately 40 Winnipeg based organizations participated in the Fair with display tables and entertainment.

At the conclusion of the Fair, the Manitoba Human Rights Commission hosted a candle lighting ceremony, as it has done in previous years. The 2nd Annual Human Rights Journalism Award, an award cosponsored by the Commission and the Winnipeg Press Club, was presented to Aldo Santin and Pauline Comeau, reporters with the Winnipeg Free Press, for their work on the supplement "Indians: Strangers in Their Own Land." The Winnipeg Free Press received a special certificate of corporate achievement in recognition of the overall corporate effort which went into the production of the supplement. The program also included a speech by Mandisi Titt, a recent refugee from South Africa.

The staff of the Brandon office, assisted by commissioners from the area and local community organizations, organized a number of activities to celebrate the occasion. A display table was set up for two days in the Brandon Gallery Shopping Mall and a full day of activities took place at the Brandon University including speeches, workshops, and a candle lighting ceremony. The showing of films and videos, an art display featuring work with human rights themes by Manitoba artists, and ethnic music and dance were also included in the program.

In Northern Manitoba, Commission staff provided assistance to groups in The Pas, Thompson and Flin Flon who wished to mark the 40th Anniversary. In each of these communities, events were held which included speeches on the subject of human rights and candle lighting ceremonies. In The Pas, the event was held at the Otineka Mall. The winners of a poster contest were announced and the posters were displayed throughout the day. The Flin Flon Friendship Centre hosted and organized a poster contest and the ceremonies there concluded with the sharing of a 40th Anniversary cake and coffee. The Thompson ceremony took place at the

Thompson Multi-Culture Centre and was followed by an open house display on human rights issues.

The 40th Anniversary was celebrated in many other communities throughout Manitoba where a variety of groups and organizations sponsored special events which included candle lighting ceremonies, contests, displays, workshops, and speeches. Special proclamations of Human Rights Day or Human Rights Week were issued by the Province of Manitoba and approximately 25 municipal governments from all regions of the province.

National and International Events

The Commission continues to hold membership in the Canadian Association of Statutory Human Rights Agencies (CASHRA), the International Association of Official Human Rights Agencies (IAOHRA), and the National Association of Human Rights Workers (NAHRW). Government travel restrictions and limited financial resources have severely restrained the Commission's involvement in the latter two organizations which are based in the United States.

The Commission was, however, able to send delegates to the Annual CASHRA Conference and Business Meeting which was held in St. John's, Newfoundland, and was pleased to support the establishment of two important committees. One of these committees will be working towards a system of more effective coordination and information sharing between human rights agencies in matters related to affirmative action. The Director of Compliance has been designated as the contact person for liaison between the Manitoba Commission and this committee. In addition, the Executive Director of the Commission was an active participant in the initiation of a permanent committee of CASHRA to focus on training for human rights officers. This committee will attempt to coordinate and respond to the training needs of the human rights agencies in the various Canadian jurisdictions. It is hoped that these efforts will bring about a more efficient use of training resources for all member agencies.

The Executive Director also attended meetings of the Continuing Committee of Officials Responsible for Human Rights to assist the Official Representative of the Government of Manitoba by providing the necessary liaison and communication link with the Manitoba Human Rights Commission. A major activity of the Continuing Committee in 1988 was the preparation for the Conference of Ministers Responsible for Human Rights which was held in Toronto in September of 1988. Manitoba's Attorney-General, the Honourable James McCrae, attended the conference and joined with his counterparts in the provincial, territorial and federal governments in the signing of a proclamation to mark the 40th Anniversary of the Universal Declaration of Human Rights. Included on the agenda of the conference were such items as the Decade of Disabled Persons; Human Rights Education; the Second Decade for Action to Combat Racism; and medical and legal issues related to human rights. Through the Executive Director, the Commission will be actively contributing to the work of the Committee which is to be carried out as follow-up to the conference.

Future Directions and Needs

The past year has been full of reminders that discrimination and prejudice are a long way from being eliminated in Canadian society. This has been demonstrated by allegations of racism and sexism in a variety of institutions; economic indicators which continue to reveal serious inequities with respect to employment opportunities for women, disabled persons, Aboriginal people, and other minorities; and ongoing reports of individual incidents of discrimination and prejudice. It is clear that efforts to eliminate discrimination must not be relaxed. Indeed, it would appear that those individuals and organizations committed to the promotion of human rights should be increasing their efforts and activity.

Increased activity, however, requires increased resources. The fight against discrimination is dependent on the commitment of time and money, both of which are already stretched to the limit at the Manitoba Human Rights Commission.

The Commission is cognizant of the difficult decisions which must be made by Government in the allocation of increasingly scarce resources, and appreciates the support which has been demonstrated by both the present and previous governments. Without the additional positions which have been granted to the Commission since 1985, the backlog of compliance files would now have grown to three hundred files or more, and the public education staff would still consist of one officer. Nonetheless, the backlog has not been eliminated, and the effective delivery of human rights education programs throughout the province continues to be a goal rather than a reality. As the Commission struggles to maintain a level of service comparable to that of a decade ago, important and necessary new programs and services remain totally out of reach.

It is a position strongly held by human rights practitioners, and reflected in the statutes they enforce, that discrimination must be battled on two fronts. When discrimination has already occurred, corrective action must be taken. This is achieved by ensuring that actions or decisions which are believed to have been discriminatory can be reported to an agency which will investigate and, if warranted, will take the necessary

action to ensure that the effects of the discrimination are remedied. In addition, discrimination must be prevented through the alteration of individual attitudes and institutional practices which result in discrimination. To attain this objective, commissions must be able to carry out a variety of programs and activities which are designed to bring about substantive social change.

In general, the complaint mechanism has been seen as the vehicle for correcting the effects of past discrimination, and education as the method for preventing future discrimination. However, these two areas of activity often overlap in both practice and effect.

In recent years, human rights advocates have become increasingly aware of systemic discrimination as a major barrier to equality of opportunity. Greater understanding of the elements of this form of discrimination, and of the need for appropriate strategies to combat it, have resulted in changes to human rights legislation in many Canadian jurisdictions including Manitoba. In order to ensure a clarity of jurisdiction not set forth in the previous statute, a specific prohibition against systemic discrimination was included in the new *Human Rights Code*. By removing any doubt with respect to the Commission's jurisdiction over this form of discriminatory activity, the legislature has ensured that the complaint process can be utilized to combat systemic discrimination and to remedy its effects. Such provisions are of little value, however, unless the Commission is equipped to respond appropriately to these complaints.

Systemic discrimination is somewhat different from the more overt forms of discriminatory behaviour. It is often so interwoven into the policies and practices of an organization that even those who are perpetuating the discrimination are unaware of its existence. Special expertise is required to analyze the policies and practices which may have a discriminatory effect, and to identify the appropriate corrective measures to be taken. As these are essential elements in the investigation and conciliation of complaints of systemic discrimination, human rights officers will require training in these areas and resources must be allocated for this purpose.

Because systemic discrimination is visible only through its global effect on particular populations, the individual members of the group are almost always unaware that it is the cause of their inability to obtain employment or to access other opportunities. Therefore, the effective use of the complaint mechanism as a tool for the elimination of systemic discrimination is dependent on the ability of the Commission, itself, to initiate such complaints. Under the present circumstances however, if the Commission is to initiate new complaints in response to indications of the existence of systemic discrimination, it must do so with the full awareness that these initiatives will add to the current workload and will likely increase the compliance backlog. This would create even further delays for many complainants who have experienced other forms of discrimination and are already required to wait long periods of time for resolutions to their complaints.

Another strategy for bringing about the eradication of systemic discrimination, and one which the Commission considers to be an important element of its educational mandate, is the aggressive promotion of voluntary affirmative action programs. Well designed affirmative action programs not only address the effects of systemic discrimination by creating greater opportunities for whose who have been historically denied access to societal benefits, these programs also prevent future discrimination by identifying and eliminating systemic barriers to equality within the organization. Unfortunately, the willingness to voluntarily implement affirmative action programs is not universal. When systemic discrimination is found to exist and corrective measures are resisted, *The Manitoba Human Rights Code* empowers an adjudicator to order the implementation of an affirmative action program.

There are, however, many businesses in this province which are too small to support specialized departments of human resources or personnel management and therefore may lack the expertise to design and implement such programs. *The Code* has recognized this by assigning to the Commission a responsibility to provide assistance in the supervision or implementation of a program which has been ordered by an adjudicator. The Commission believes that it would be much more successful in its efforts to promote the voluntary implementation of affirmative action programs if it were able to provide this type of assistance on a more general basis. To do so, however, the Commission would have to receive additional resources or reduce existing programs and services.

Commissions are also being challenged to offer a wider range of traditional human rights education programs. Employers, and others who are responsible for activities which fall within the purview of the legislation, are becoming increasingly aware of the financial and other costs which result from discriminatory practices, and are asking for more information to enable them to ensure that their policies and practices are in compliance with *The Code*. In addition, community organizations are looking to the Commission to play a more significant role in the areas of race relations and community mediation.

Human rights education must advise individuals of their rights, promote and facilitate compliance with the legislation, and address the causes of prejudice and discrimination. Believing that

these activities are essential for the elimination of prejudice and the prevention of discrimination, the Commission has expanded its educational programs in recent years. Nonetheless, the present allocation of approximately 2.5 staff years for educational activities does not permit the delivery of the broad range of programs which are necessary to achieve these objectives, and which the Commission is required by statute to deliver throughout the province.

In an effort to meet these needs and obligations, the Commission has repeatedly requested support from the government for the implementation of new programs.

An experiment with a volunteer program, which ran from late 1983 to early 1985, demonstrated the valuable contribution to be made by volunteers in the area of human rights education. Volunteers brought to the education program a wide range of skills and abilities to complement those of the permanent staff and enriched the educational activities of the Commission by providing an invaluable link with the community. With the reintroduction of a volunteer program, dedicated individuals in communities throughout the province would be able to assist the Commission to meet its statutory obligation to ensure that human rights education is accessible to all Manitobans. While many individuals have offered their services and, in rare circumstances, the Commission has been able to accept, a volunteer program cannot exist without a full time coordinator to carry out the recruitment, training, and supervision of an organized team of volunteers.

The Commission has also requested the financial and human resources for new programs in the area of race relations or community mediation. Programs of this nature would contribute greatly to the elimination of prejudice and intolerance which ultimately leads to discriminatory behaviour but they cannot be initiated without the acquisition of appropriately skilled personnel.

In addition to seeking additional resources for new programs, the Commission has attempted to make the most effective use of existing resources by refining many of its procedures, and will continue to experiment with new ways to improve efficiency. It is unrealistic, however, to expect such measures to significantly diminish the gap between the need for services and programs and the ability to respond to that need.

As long as this gap exists, difficult choices must be made regarding the allocation of resources in response to conflicting demands. If complaints are initiated by the Commission, complaints filed by members of the public will remain in backlog for longer periods of time; educational activities designed to meet one set of objectives will diminish the availability of education programs to meet other objectives; and resources allocated to education will not be available for compliance activities.

Perhaps the greatest challenge to human rights commissions in the eighties and nineties can be found in the effort to maintain a sense of direction and purpose while acknowledging the fact that the need for action far exceeds the ability to act. When there are clearly insufficient resources to do all that should be done, there are only two possible options. One option is to simply continue doing as much as is humanly possible in each area of service or program delivery. In the field of human rights, this may mean accepting the existence of the backlog of complaints and an inadequate level of human rights education. The other option is to give priority to those activities which appear to be of greatest importance. This may result in the rejection of some complaints or programs in order to more effectively deal with others. Both options may result in external criticism and internal frustration, and the choice between them will be difficult. Unfortunately these decisions cannot be avoided. If it is truly impossible to do all that needs to be done, then something important will be left undone. The only question is whether the outcome is to be determined by design or by default.

The Commission believes that human rights issues are too important to permit the outcomes to be determined by default. Reasoned and conscientious decisions must be made and, in order to be effective, they must be made in the context of a comprehensive strategy within which priorities can be assessed in relation to long term objectives. Such a strategy must not only concern itself with current programs and service demands, it must also ensure that appropriate attention is given to the acquisition and maintenance of the skills of agency personnel and to the need for research and policy development.

While the Manitoba Human Rights Commission will continue its efforts to ensure that human rights issues remain high on the agenda of the Government of Manitoba, it also takes very seriously its own responsibility to effectively manage those resources which are presently available. Over the coming year, the Commission will be considering options and establishing priorities as part of the development of a long range strategy for the eventual attainment of human rights goals and objectives.

Advisory Opinions

The new *Human Rights Code*, proclaimed in December 1987, includes a new provision for persons subject to the prohibitions of *The Code* to obtain a written binding "advisory opinion" as to whether any act or omission by them is in compliance or contravenes *The Code*. *The Code* also requires that such advisory opinions be available for public inspection and be summarized in the Commission's Annual Report.

The following are summaries of advisory opinions issued by the Commission in 1988:

Employment (Hiring)/Sex as a Bona Fide Occupational Requirement

Application:

Concordia Hospital of Winnipeg applied for an advisory opinion as to whether they could continue their practice of employing one male and one female for their positions of Operating Room Orderly and Nurses' Aide.

Background:

Information provided indicated that, unlike other Orderly and Nurses' Aide positions, both these operating room positions included the function of performing pre-operative shaving of a patient's genital area if the patient is to undergo abdominal or genital surgery. At the time of the application, the only two such positions were filled by one male incumbent and one female incumbent. The traditional practice at Concordia was for the male Orderly to perform the pre-operative shave on male patients and for the female Nurses' Aide to perform the pre-operative shave on female patients. Concordia Hospital maintained that this preference for employment based on sex was bona fide and reasonable in light of community standards of public decency and respect for the personal privacy of the patient.

Opinion:

The Human Rights Code prohibits discrimination in employment based on sex unless it is based on "bona fide and reasonable requirements or qualifications for the employment or occupation." Commission policy recognizes that in some circumstances, public decency and/or individual right to privacy can justify that one sex be given preference over another. In determining which set of interests prevailed in the circumstances of this application — patient privacy or equality of opportunity in employment — the Commission considered two significant factors. Firstly, given the size of the Hospital and its patient population and only two employees to perform the pre-operative shave function, there appeared to be no flexibility to permit this one duty being performed by someone other than the Orderly or Nurses' Aide on duty if the patient objected to service by a person of the opposite sex.

Secondly, the Commission noted that Concordia's practice was not based on a stereotypical view of the roles or relative abilities of males and females and there was no question as to the capabilities of both sexes in either of the positions of Orderly or Nurses' Aide. The sole concern was the embarrassment and discomfort that would likely be caused a patient were he/she to be subjected, contrary to his/her wishes, to a pre-operative shave by a staff member of the opposite sex. The Commission distinguished this concern for personal privacy from situations of customer preference based on prejudice and stereotyping.

In the specific circumstances, it was the Commission's opinion that the practice of maintaining one male and one female employee for these two positions was a bona fide and reasonable requirement or qualification for the employment or occupation in question.

Employment/Ancestry as a Bona Fide Occupational Requirement (Native Indian)

Application:

Northwest Child and Family Services applied for an Advisory Opinion as to whether they could exercise a preference for Native Indian applicants for positions of Social Worker, Child Care Worker, Homemaker and Administrative Support Staff whose primary responsibilities involved contact with the public.

Background:

N.C.F.S. is mandated under *The Child and Family Services Act* of Manitoba to provide a range of child welfare services to children and families living in Northwest Central Winnipeg. Their mandate includes a statutory duty "to respect the cultural and linguistic heritage of families and children."

Census data indicated the area served by the agency had a population of which approximately 4% was Native Indian. Furthermore, an independent study of the agency's service demand, indicated that 50% of all family services cases were Native Indian families. In contrast, less than 20% of existing staff were of Native ancestry.

N.C.F.S. concluded that the employment of Native staff by the agency in certain designated positions was essential to adequately accommodate the special needs of their high proportion of Native clientele. The agency contended that Native staff with appropriate background, training and experience could more readily understand and respect the unique cultural and

linguistic heritage of the Native children and families that the agency serves. In addition, Native staff would more likely be perceived with trust by Native families because of their common cultural and linguistic heritage. This common heritage was seen as essential in working with children where role modelling was a very positive influential factor in their development.

Opinion:

The Human Rights Code prohibits discrimination in employment based on ancestry unless it is based upon "bona fide and reasonable requirements or qualifications for the employment or occupation." At the same time, *The Code* specifies that "the failure to make reasonable accommodation for the special needs of an individual or group" can constitute discrimination in services. The Commission concluded that Native people were entitled to services which accommodated their special needs. Because cultural and linguistic heritage was so integral to a successful relationship between worker and Native Indian families in need of child and family services, and because the client's perception of this heritage was so critical to instilling trust and providing positive role models, the Commission was of the opinion that the preferential hiring for 50% of the designated positions would be in compliance with *The Human Rights Code*. The Commission concluded that this employment practice was justified as a "bona fide and reasonable occupational requirement" and was a means of "reasonably accommodating the special needs of a group" within the exceptions provided by *The Human Rights Code*.

Affirmative Action Program/ Pre-employment Inquiry Data Collection

Application:

The Manitoba Telephone System was in the design stage of an Affirmative Action Program and wished to collect pre-employment data relating to gender, race, ethnicity and disability through the use of a pre-employment questionnaire. The data collection was for the sole purpose of the Affirmative Action Program analysis and design and would not be available for personnel purposes.

Background:

M.T.S., a Provincial Crown Corporation providing telecommunications services and products, wished to design and implement an Affirmative Action Program to ensure that ultimately, the representation of women, Native people, the disabled and visible minorities in the Corporation's work force would be more reflective of the community at large.

Data collection using pre-employment inquiries as to gender, race, ethnicity and disability would be used to analyse the number of applicants by target group status and to measure how far those applicants progressed towards employment in the various pre-employment stages. The collection and analysis of this data would then assist in the identification of barriers to employment which may exist in recruitment, prescreening, interviewing or selection procedures, by having a disparate impact on members of the target group. Special measures could then be designed to address such barriers. M.T.S. contended that the pre-employment questionnaire was an important means of data collection to facilitate the design of a full Affirmative Action Program.

Opinion:

The Human Rights Code prohibits any form of pre-employment inquiry which requires an applicant to furnish information such as sex, ancestry, nationality or national origin, ethnic background or origin and physical or mental disability. However, *The Code* also clearly stipulates that it is not discrimination to plan, advertise or implement an Affirmative Action Program which has as its object "the amelioration of conditions of disadvantaged individuals or groups . . . and achieves or is reasonably likely to achieve that object."

The Commission concluded that the objectives of M.T.S. to ensure the removal of employment barriers for women, aboriginal persons, visible minorities and persons with disabilities, and to achieve employment equity within the M.T.S. work force, was consistent with the Affirmative Action objectives promoted by *The Human Rights Code*. The form of data collection proposed by M.T.S. through the pre-employment questionnaire was viewed as an initial and necessary step in the design phase of the program so as to contribute to the achievement of the ultimate Affirmative Action objectives. As a diagnostic tool, the questionnaire and resulting data would enable the identification of disadvantage in the work force and the design of special measures to both remove barriers and to remedy the effects of past discrimination.

Employment (Hiring)/Ancestry as a Bona Fide Occupational Requirement (Native Indian)

Application:

The Dauphin Friendship Centre submitted an application for an advisory opinion as to whether preferential hiring of Native Indian applicants for all job openings within their Centre would be in compliance with *The Human Rights Code*. Preference would only be exercised where the Native applicant met the basic job qualifications or where the Native applicant with a minimum amount of training/upgrading could meet the basic job qualifications.

Background:

The Dauphin Friendship Centre is a non profit corporation whose essential objectives are to advance and promote the well being of Native people and the understanding of their culture and heritage. This is done by providing social and recreational activities for Native people, developing community action groups and community leadership, and encouraging the assistance of service agencies, private industry and all levels of government in advancing and maintaining the well being of Native people.

Ninety percent of the Centre's clientele and membership are Native. Most of the employees at the Centre are involved in counselling and programming and all of the positions require daily contact with the Native community. Given the objectives of the Centre, it was contended that an understanding and empathy for Native culture and traditions was an essential requirement of all the positions and furthermore, that a hiring of non-Native employees would undermine the authenticity and effectiveness of the service provided.

In addition, statistics indicated that in comparison to the general population, Native persons are disproportionately under employed. It was contended that preferential hiring of Native applicants by a Native agency would increase job and training opportunities for Native people in the community, provide positive role models for the Centre's clientele in promoting their individual well being and ultimately, help portray a positive image of Native people in the non-Native community and act as an incentive to business for their hiring.

Opinion:

The Human Rights Code prohibits discrimination in employment on the basis of ancestry unless the discrimination is based upon "bona fide and reasonable requirements or qualifications for the employment or occupation." In addition, *The Code* specifies that it is not discrimination "to make reasonable accommodation for the special needs of an individual or group" including a group characterized by their ancestry.

The Commission concluded that the applicant's practice of preferential hiring of Native candidates was, in their opinion, not a contravention of *The Human Rights Code* where the basic qualifications were met or where the Native applicant with minimal training could meet the basic qualifications. The Native preference appeared to be justified as a "bona fide and reasonable requirement of the employment." Furthermore, the employment practice enhanced the recognition of the cultural heritage of the organization's Native clientele and members, and appeared to be justified as "reasonable accommodation for the special needs of a group" within the exceptions provided by *The Code*.

Services and Employment/Sex as Bona Fide and Reasonable Restriction

Application:

Selkirk Co-op on Abuse Against Women Inc. operates Nova House, a shelter from abuse for women and their children. The Co-op requested an advisory opinion as to its current practice of providing housing within their shelter to women and their children only. They also requested an opinion as to their practice of employing women only within their shelter.

Background:

The applicant has maintained a safe-house shelter for women and their children since June 1987. The shelter is a three bedroom house licensed to be occupied by a total of 15 persons. Because of its limited facilities and shared spaces, the Co-op has restricted housing within the facility to women only in order to maintain privacy and decency and to preserve the confidence of the women who are in need of service and safe shelter. Male clients in need of shelter from family violence are provided equal but separate services outside the shelter and receive the same supportive counselling and referral services.

The shelter is staffed around the clock and any staff employed within the shelter may, at times, be the sole staff member to deal with clients. The applicant employs women only for these positions, again to maintain the privacy needs of women housed in the shelter and also to maintain a confidence and trust of women who have suffered abuse. Volunteers, both male and female, are involved in other programs provided by the Co-op.

Opinion:

The Commission determined that the applicants' practice of restricting shelter within Nova House to women and children only was bona fide and reasonable in the circumstances. They recognized the great need of women for such shelter and service and accepted that the effectiveness of the service would be undermined were men also sheltered in the same facility. In addition, they recognized the difficulties it would pose in such a small facility to maintain privacy and public decency. It also noted the availability of alternate services to male clients.

The Commission also determined that, in order to meet the needs of the clients for privacy, safety and trust, being female was a bona fide and reasonable occupational requirement for staff positions within the shelter which involved receiving clients, providing them couselling, maintaining the facility and keeping clients safe at all hours of the day and night.

Legal Proceedings

The following are matters which have been decided by, or are currently before a Board of Adjudication or Court. It should be noted that proclamation of the new ***Human Rights Code*** in December 1987 created a new process for the appointments of Boards of Adjudication from a Panel of Adjudicators. This Panel was not constituted until September 1988 as a result of which no Board appointments were made in 1988 and no new Adjudications heard.

Appeal: Govereau and Janzen vs. Platy Enterprises Ltd. (Pharos Restaurant)

(Previously reported in the 1984, 1985, 1986 and 1987 Annual Reports)

Background:

Tracy Govereau and Diana Janzen, employed as waitresses at Pharos Restaurant, alleged that during their employment, the cook of the restaurant continually harassed them by grabbing and touching their bodies and making lewd comments about their anatomy. They alleged that in spite of their protests, both to the cook and to the owner, the behaviour continued. Tracy Govereau alleged that her hours were reduced and that she was ultimately terminated by her employer because she complained to the management about the harassment. Diana Janzen alleged that she was forced to terminate her employment because of the cook's behaviour toward her. Both women alleged that they had been subjected to discriminatory conditions of employment and, ultimately, had been terminated because of their sex.

The investigation results appeared to support the complaints and conciliation was attempted but was unsuccessful. As a result, the Attorney-General was requested to appoint a Board of Adjudication to hear and decide the matter. Mr. Yude Henteleff, Q.C. was appointed as Adjudicator and hearings were held in 1984.

On April 26, 1985, Mr. Henteleff delivered his decision on these cases. He found that the complainants were sexually harassed by the cook and that the employer was made aware of the harassment but failed to take any reasonable steps to assure that the workplace would be free from fear of sexual harassment. Mr. Henteleff found the company and the cook jointly and severally liable and ordered that Diana Janzen be compensated $480 for lost wages and $3,500 for damages. Tracy Govereau was awarded $3,000 lost wages and $3,000 general damages. Platy Enterprises Ltd. was ordered to provide the Commission with a letter agreeing to comply with *The Act* and, further, that under the direction of the Commission, Platy Enterprises Ltd. was to establish and maintain, in all of its restaurant premises, a program which would reasonably ensure that the restaurants would remain free of sexual harassment.

The respondent subsequently appealed the Adjudicator's decision to the Court of Queen's Bench challenging the scope and constitutionality of *The Act* itself and arguing that the quantum of damages assessed by the Adjudicator was excessive.

Justice Monnin rejected all the respondent's grounds of appeal but reduced the awards. Diana Janzen was awarded lost wages in the sum of $480 and damages for loss of self-respect and hurt feelings in the amount of $1,000. Tracy Govereau was awarded $500 for lost wages and $1,500 for hurt feelings and loss of self-respect. In addition, Justice Monnin found that a letter of undertaking to comply with and establish a program acceptable to the Human Rights Commission was outside the scope of *The Act.* He varied this order by ordering the respondent to ensure that the restaurant premises remain free of sexual harassment.

The respondent appealed Justice Monnin's decision to the Court of Appeal and the Appeal was heard May 26 and 27, 1986 by Matas, Huband and Twaddle, JJ.A. Regrettably, Justice Matas passed away before the decision was rendered on November 19, 1986.

Huband and Twaddle, JJ.A. held that sexual harassment did not constitute sex discrimination in the absence of clear wording to that effect in the legislation. They also found that there was no duty on an employer to provide a workplace free of sexual harassment. They found that the corporate employer was not liable for the actions of its cook because the company was not an accomplice of the act, did not have a policy to discriminate and because the cook had no express or implied authority to sexually harass the waitresses. In addition, it was found that the cook could not be considered part of the "directing mind" of the corporation because he exercised very limited managerial responsibilities. Justice Huband also held that a Board of Adjudication established for the purpose of determining whether a case of sexual harassment had been established, would be unconstitutional in that it would be infringing on powers conferred to courts at the time of confederation.

The Commission, in reviewing the Court of Appeal's decision, concluded that the decision seriously eroded the principle of equality of opportunity as the result of the narrow interpretation of sex discrimination and the limitation on corporate liability. The Commission sought Leave to Appeal the decision to the Supreme Court of Canada. Leave to Appeal was granted on June 25, 1987. The Women's Legal

and Education Fund (LEAF), an organization dedicated to testing equality issues for women before the Courts, sought and was granted intervenor status in this case.

1988 Update:

The Supreme Court heard arguments in June 1988. At the time of writing this report, no decision had yet been rendered.

Appeal: Brooks, Allen and Dixon vs. Canada Safeway Ltd.

(Previously reported in 1984, 1985, 1986 and 1987 Annual Reports)

Background:

In 1983, Susan Brooks, Patricia Allen and Patricia Dixon filed complaints alleging that the employee disability benefit plan provided by the company discriminated on the basis of sex and family status by disqualifying pregnant women from receiving benefits. They alleged that under the terms of the plan, no benefits are payable during a seventeen week period commencing ten weeks prior to the expected week of confinement and ending six weeks after the week of confinement. Ms. Brooks experienced pregnancy-related disabilities and initially received benefits. However, she alleged that ten weeks before the expected confinement, her disability benefits ceased. Ms. Allen and Ms. Dixon experienced pregnancy-related disabilities which commenced within ten weeks prior to their expected weeks of confinement and Ms. Allen continued to experience pregnancy-related disabilities following the birth of her child. All three were denied eligibility for benefits. In contrast, employees who experienced other forms of disability continued to be eligible for benefits under the plan throughout the period of their disability.

Since the investigation revealed an apparent contravention, conciliation was attempted but was unsuccessful. The Commission requested the Attorney-General to appoint a Board of Adjudication to hear and decide the complaints, and Mr. J.F. Reeh Taylor, Q.C. was appointed as Adjudicator. It was agreed that the Brooks complaint would be heard and decided first.

On October 26, 1984, Mr. Taylor ruled that the complainant had not filed her complaint within six months of the notification of her ineligibility for benefits and that therefore he had no jurisdiction to deal with the complaint on its merits. He also ruled that, while the evidence clearly established there was indeed discrimination against Ms. Brooks under the terms of the disability benefit plan, the discrimination was by reason of her pregnancy and not by reason of her sex and family status. He noted that pregnancy was not explicitly stated in *The Human Rights Act* as a prohibited ground of discrimination and therefore dismissed the complaint.

The Allen and Dixon cases were heard November 28 and 29, 1984, and a decision rendered February 8, 1985. Although these complaints were held to have been filed in a timely manner, they also failed, according to the Adjudicator, for the same reasons that discrimination because of pregnancy was not equivalent to discrimination because of sex and/or family status. The Commission filed an appeal of the decision in all three cases.

The appeal was heard by Mr. Justice Vern Simonsen of the Court of Queen's Bench who rendered a decision on November 27, 1985, in which he denied that appeal. He agreed with the Adjudicator that there was discrimination against the complainants by reason of their pregnancy, but not by reason of their sex or family status. The Commission filed an appeal to the Court of Appeal.

The appeal was heard and a decision rendered by O'Sullivan, Huband and Twaddle, JJ.A. on May 6, 1986. The Court held that there was no discrimination and dismissed the appeal.

On March 26, 1987, the Commission was granted Leave to Appeal the Court of Appeal decision to the Supreme Court of Canada. At the year's end, no date had been set for the appeal to be heard. The Women's Legal Education and Action Fund (LEAF), a national organization dedicated to pursuing women's equality issues in the courts, requested and was granted intervenor status in the cases.

1988 Update:

The Supreme Court heard arguments in June 1988. At year's end, no decision had yet been issued by the Court.

Note: Complaints were also filed against Dominion Life Assurance Company, the underwriters of the benefit plans. It was agreed at adjudication that these complaints would be adjourned pending a final determination of the issues in the Canada Safeway complaints.

Obirek, Apsit and Gaffrey vs. Manitoba Human Rights Commission

(Previously reported in the 1985, 1986 and 1987 Annual Reports)

Background:

In 1985, the Commission approved an affirmative action program of the Manitoba Government's Department of Natural Resources whereby Native Indians would be given preference in the granting of wild rice licenses over a period of two years.

Following the Commission's approval of the affirmative action plan, Alfred Apsit and

Laurie Gaffray, representing themselves and the Manitoba Rice Farmers Association asked the Court to quash the Commission's decision, alleging that it was made contrary to the principles of natural justice.

Specifically, they claimed that the Commission should have heard evidence under oath and provided them with an opportunity to cross-examine on the evidence. They also alleged that the Commission's approval of the program was unconstitutional in that the affirmative action plan was contrary to the equality provisions of *The Charter of Rights*.

The motion was heard before Mr. Justice Jewers who ruled that the Commission was acting as a purely administrative and not as a quasi-judicial tribunal when approving a program under Section 9 of *The Act*. As such, the Commission must act "fairly" in rendering its decision. The Court ruled that the Commission "acted more than fairly" in that all interested parties were advised of the Special Program application, a hearing was held and interested parties, including the applicants, were given a full opportunity to respond to the plan, both orally and in writing.

With respect to the applicants' *Charter* challenge, the Court stated that the Special Program, approved by the Commission was, on its face, inconsistent with Section 15(1) of *The Charter* and that there is an onus on the Commission to demonstrate that the plan which it approved falls within the exception provided by Section 15(2) of *The Charter*. Justice Jewers concluded that he did not have enough evidence to determine if the beneficiaries of the plan are "disadvantaged individuals" or if the affirmative action plan would "ameliorate their conditions". He therefore ordered a trial of the issues to determine:

1) whether the affirmative action program complied with Section 15(2) of *The Charter* and;
2) if not, whether Section 9 of *The Manitoba Human Rights Act* was a "reasonable limit" within Section 1 of *The Charter*.

Hearings were concluded before Justice Simonsen of the Queen's Bench in September 1986.

A decision of the Queen's Bench was rendered November 16, 1987.

On the first question, Mr. Justice Simonsen ruled that the affirmative action program, as submitted by the Department of Natural Resources and as approved by the Human Rights Commission, did not comply with Section 15(2) of *The Charter of Rights*. Although he accepted that Native people were disadvantaged generally, he was not satisfied on the evidence that they were disadvantaged in relation to wild rice harvesting.

Futhermore, he found that the program (which provided preference in the granting of licenses to Native Indians) resulted in exclusive licensing to Native people and could not be justified if it "unnecessarily denies the existing rights of the non-target groups". According to Justice Simonsen, an affirmative action program can only be justified under Section 15(2) of *The Charter* if the program addresses the cause of the disadvantage suffered by the target group. He concluded that any disadvantage suffered by Native people was not caused by their inability to obtain licenses and that preferential licensing for Native people was therefore not justified.

On the second question, Mr. Simonsen ruled that, if an affirmative action program failed to comply with *The Charter*, it could not be permitted by other legislation such as Section 9 of *The Human Rights Act*. For these reasons, he declared the Commission's approval of this program null and void.

1988 Update:

The Commission appealed this decision out of concern that the principles enunciated by Justice Simonsen would place severe restrictions on future affirmative action programs, by requiring that the causes of disadvantage be identified before the effects could be remedied. This would create difficulties in many situations where the disadvantage is usually the product of a complex mixture of factors e.g. historical, social, economic, educational, etc. The appeal was heard by the Court of Appeal and a judgement was delivered December 7, 1988.

The Court of Appeal considered three issues:

1) Did the Commission have status to appeal a challenge to the constitutional validity of a provincial affirmative action program;
2) Could Justice Simonsen declare the Commission's approval null and void on the issues before him; and
3) Was the Court of Appeal precluded from hearing the appeal on the grounds of mootness because the program was discontinued and *The Human Rights Act* amended.

On the first question, the Court ruled that procedurally, it is the Attorney-General, and not the Commission, who has the obligation of defending the constitutional validity of a provincial affirmative action program and that the Commission's authority was limited to approving such programs for provincial purposes only under *The Human Rights Act*. However, they found that the Commission had at least the tacit approval of the Attorney-General and therefore accorded it status to appeal.

On the second question, the Court ruled that the issues before Justice Simonsen concerning the constitutional validity of the program and

the affirmative action provisions of *The Human Rights Act*, did not permit him to declare the Commission's approval itself null and void.

On the third question, the Court of Appeal declined to hear the appeal on its merits because the program itself was discontinued and the affirmative action provisions under *The Human Rights Act* had been changed. The Court indicated reluctance to determine the proper test for whether an affirmative action program is constitutional in a factual vacuum. The Court did, however, cast doubt on the persuasive value of the Queen's Bench decision when the order made in the decision has been set aside.

Wadhawan vs. McDonald Supply Limited, McDonald Supply Appliances Limited and Ron Borowski

(Previously reported in the 1986 and 1987 Annual Reports)

Background:

Jagdish Wadhawan who is of East Indian descent, filed a complaint alleging that during his employment as a service manager, he was subjected to discriminatory terms and conditions of employment in the form of racial harassment by his supervisor, Ron Borowski, and that he was subsequently terminated from his job. He alleged that he was discriminated against because of his race, colour, nationality and ethnic or national origin.

The investigation results appeared to support the complaint. However, since a voluntary settlement could not be negotiated, the Attorney-General was requested to appoint a Board of Adjudication to hear and decide the matter.

Mr. Vic Savino was appointed Adjudicator and hearings were held in 1986. A decision was rendered November 19, 1986. Mr. Savino found Jagdish Wadhawan was subjected to derogatory remarks and insulting language about his East Indian background to the point that it "poisoned his workplace environment". He found that the supervisor, Ron Borowski, was primarily responsible for such remarks, but noted that junior employees also seemed to follow the lead of the senior person in the use of derogatory racial remarks. Mr. Savino also found that Ron Borowski threatened to dismiss Wadhawan and acted on his racially motivated taunt at his first opportunity following a company reorganization when he was given authority to dismiss employees. The Adjudicator found no evidence to substantiate alternate causes for dismissal alleged by the respondent.

In apportioning liability between Borowski, McDonald Supply Limited (MSL) and McDonald Supply Appliances Limited (MSA), Mr. Savino noted that MSL did take some reasonable action to mitigate the problems in the workplace, as they had attempted to deal with the problem through several meetings and had reversed a previous attempt by Borowski to fire Wadhawan. On the other hand, MSA, the successor company who acquired the assets of MSL, knew about the racial harassment and permitted the dismissal, knowing Borowski's racially motivated attitude. The Adjudicator ordered that Borowski and MSA were jointly and severally liable to pay Wadhawan $15,000 in lost wages. For damages to feelings and self-respect, Mr. Savino ordered $2,000 payable by Borowski, $500 payable by MSL and $5,000 payable by MSA.

In 1987, the Respondents filed an appeal to Mr. Savino's decision in the Court of Queen's Bench.

1988 Update:

At year's end, the appeal had not yet been heard.

Appeal: Callen vs. Sticky's Service and Drive Inn (Dauphin)

(Previously reported in the 1986 and 1987 Annual Reports)

Background:

Kathi Callen had been employed as a waitress at Sticky's Service and Drive Inn in Dauphin, Manitoba. She alleged that throughout her four months of employment there, she was continually harassed by the owner/manager, Mel Stokotelny. She claimed that the sexual harassment consisted of verbal propositions and lewd comments, as well as unwanted kissing and physical touching of various parts of her body. She also alleged that, when the owner became aware that she had contacted the Human Rights Commission for advice, he terminated her employment for having done so. The respondent denied any such harassment and indicated it was his habit and practice to engage in "banter" and "teasing". He denied terminating the complainant because she had contacted the Human Rights Commission and maintained that she was let go because she was too slow, talked too much and had a habit of "tip-trolling".

The investigation appeared to confirm the harassment and the termination due to retaliation, so conciliation was attempted, but was unsuccessful. As a result, the Attorney-General was requested to appoint a Board of Adjudication and Douglas Paterson, Q.C. of Brandon, was appointed as Adjudicator. Hearings were held in 1986.

Mr. Paterson rendered his decision on June 12, 1986. He found that Kathi Callen was sexually harassed by Mel Stokotelny, both verbally and physically to the point of "poisoning" her work environment, causing her to feel humiliation

and lessened self worth. In addition, he found that submitting to her employer's sexual advances was a condition of maintaining her employment. Regarding the retaliation complaint, Mr. Paterson noted that Mel Stokotelny candidly admitted to tricking Ms. Callen into confirming her telephone complaint to the Human Rights Commission. The Adjudicator found that this evidence, together with the timing of her dismissal following this revelation and the lack of evidence as to any poor work performance, confirmed that she was terminated in retaliation for having contacted the Human Rights Commission.

Since Mel Stokotelny was the "directing mind" of the corporation, Mr. Paterson found him and his corporation jointly and severally liable for lost wages approximating $2,100 and damages for humiliation and lessened self-respect in the amount of $1,000.

The respondent filed an appeal of this decision to the Court of Queen's Bench. A hearing of the appeal set for December 17, 1986 was adjourned pending the outcome of the application for Leave to Appeal to the Supreme Court in the case of Govereau and Janzen vs. Platy Enterprises Limited.

1988 Update:

See update for Govereau and Janzen vs. Platy Enterprises Ltd., page 23.

Sample Complaints

The following are provided as some examples of: types of issues that can be the subject of complaints, the range of dispositions, the types of voluntary settlements that can be achieved and some reasons for dismissal or alternative dispositions.

It should be noted that 1988 was a year of transition between the former *Human Rights Act* and the new *Human Rights Code*. Some of the sample complaints were filed under the old *Act* and others under the new *Code*, depending on the date of the alleged contravention. As the determination of rights may vary in similar circumstances under the new law, reference to the current *Human Rights Code* is recommended.

These examples are no way indicative of the current caseload or the relative numbers of settled and dismissed cases. Statistical information regarding the Compliance Program can be found on page 38.

Each complaint is assessed on its own merits and settlements outlined in the following pages should not be considered as representing a particular trend or current norm.

Housing (Denial)/Nationality, National Origin (Sponsored Immigrant)

Allegation:

The complainant, a U.S. citizen, was sponsored into Canada by her stepfather and two years later, was granted landed immigrant status. After six years residence in Canada and no longer living with her stepfather, the complainant applied for subsidized housing for herself and infant child. She was advised she was ineligible for publicly subsidized housing because she was a sponsored immigrant. The complainant alleged she was denied housing accommodation because of her nationality and national origin.

Investigation:

The respondent's stated objective was to provide housing to persons of low income and small assets who could not afford market-price accommodation. At the time the complainant applied, her stepfather was no longer able to provide for her maintenance and, as a single parent, she had sought and obtained social assistance. Although her financial situation was within the eligibility guidelines followed by the agency, the respondent confirmed the guidelines also denied housing accommodation to sponsored immigrants. They maintained that sponsorship entails a ten year maintenance of the dependent and that *The Immigraiton Act* prohibited such immigrants from obtaining any maintenance support from any federal or provincial assistance program. They claimed that, as a result, they were legally obliged to deny the complainant housing assistance prior to the completion of her ten year sponsorship agreement.

A review of *The Immigration Act* enforced at the time and consultation with Immigration Authorities indicated that a sponsor was legally bound to maintain the dependent for ten years but that inability or failure to do so did not prohibit the provision of support by any federal or provincial assistance program. The effect of the sponsorship undertaking was that any agency providing such support could later seek financial redress from the sponsor.

Disposition:

Given that the agency was not prohibited from providing assistance and could in fact be reimbursed by a sponsor, it was not deemed reasonable under *The Human Rights Act* to exclude sponsored immigrants who were able to demonstrate financial need. Since there was evidence to support the complaint, conciliation was attempted. The respondent agreed to process the complainant's application for housing. In addition, guidelines followed by the agency were revised so as not to exclude sponsored immigrants from eligibility but to give them the same consideration as other applicants, on the basis of financial need. In light of this resolution, the complaint was closed as settled.

Employment (Hiring)/Age (Too Young)

Allegation:

The complainant, who is eighteen (18) years of age, requested information about the respondent's requirements for police constable as he was seeking employment in that field. He was provided an employment brochure which described the basic qualifications, one of which was a requirement that applicants be twenty (20) years of age or over. The complainant alleged that the respondent's age criteria denied him equal opportunity to apply for employment.

Investigation:

The brochure in question clearly stated that one of the basic qualifications for police constable was to be twenty (20) years of age or over. The respondent maintained that being twenty (20) years of age was a bona fide occupational requirement in that it represents a level of maturity needed for candidates to carry out their police functions. However, no means of determining maturity were examined or used for persons twenty (20) years of age or over. A review of job duties of police constable indicated that candidates had to hold a Class IV driver's licence and had to be able to use firearms, both

of which required a minimum age of eighteen (18).

Disposition:

While the nature of law enforcement (including some of the duties themselves, as well as potential ramifications and liability) suggested that age of majority was a reasonable occupational requirement, age twenty (20) appeared to be an unnecessarily stringent criteria not required by the duties of the position. Furthermore, there were alternative and, in fact, more reliable means of determining maturity than age. As a result, conciliation efforts were made to reach a voluntary resolution of the complaint. The complaint was ultimately settled to the satisfaction of all parties when the respondent adopted an eligibility criteria stipulating age eighteen (18), the age of majority, as the required minimum age.

Services (Denial)/Nationality, Ethnic or National Origin

Allegation:

The complainant, a Canadian of Austrian descent, attempted to apply for a mortgage at a local credit union. When he indicated he was not a member of the credit union, he was asked his nationality. When it was learned he was not of Ukrainian origin, he was informed that the credit union's services were available only to persons of Ukrainian origin.

Investigation:

The investigation revealed that the respondent credit union, under its articles of incorporation, has a "Closed Bond of Association" which states that membership will be limited to those who are of Ukrainian origin or members of the immediate family of such persons. ***The Credit Union and Caisses Populaires Act*** permits "common bond" credit unions who limit membership to "groups having a bond of association." At the same time, ***The Human Rights Act*** (in existence at the time) prohibited discrimination based specifically on national or ethnic origin unless the denial or discrimination is "justified in that particular situation."

Disposition:

In determining whether the differential treatment was "justified in the particular circumstances," the Commission considered the unique historical and social origins and purposes of credit unions as a special form of financial cooperative sharing principles of self help, self government and self responsibility. Unlike traditional financial institutions, they provide a range of services peculiarly suited to their environments and particular communities. Acknowledging the commitment to multiculturalism set out in Section 27 of ***The Charter of Rights and Freedoms***, the Commission determined that the respondent credit union provided specialized services relating to common language, culture, ethnic and national background and customs. The bond of association appeared to be applied consistently and persons excluded because they were non-Ukrainian had access to easily available alternate services. In these circumstances, the Commission determined that the denial of service was justified, in accordance with the exception in Section 3(2) of ***The Act***.

Employment (Terms and Conditions)/Family Status (Adoptive Parents)

Allegation:

Two women, employed by the same company, had each adopted an infant and requested benefits under the respondent's maternity benefit plan which supplemented unemployment insurance benefits for maternity leave. Both were denied the company's supplemental benefits on the grounds that such benefits did not apply to adoptive parents. The complainants alleged that the corporation's administration of its maternity benefit plan discriminated against them on the basis of their family status as adoptive parents.

Investigation:

The investigation confirmed that the respondent corporation had a supplemental benefit plan which supplemented unemployment insurance maternity benefits to a maximum of 93% of the employee's salary. The same plan did not supplement unemployment insurance adoptive benefits, as a result of which both complainants were denied the employer's "top up." The respondent did not dispute the denial but initially maintained that the differential treatment as between adoptive parents and biological parents did not constitute a violation of ***The Human Rights Act***. The Commission's policy, however, interprets family status as including "the manner and/or possibility of becoming a parent and any relationship in which the individuals present themselves as a family or are perceived to be a family."

Disposition:

The respondent voluntarily offered to resolve the complaints by extending to the complainants the full amount of benefits they would have received had their initial request for such benefits been accepted. Application was made to the Canada Employment and Immigration Commission to register the supplemental plan retroactively to avoid the complainants and potentially other affected employees from having the "top ups" deducted from the unemployment insurance benefits they received. The respondent changed its corporate policy to confirm the extension of its supplemental maternity benefits

to adoptive parents and communicated the change to all managers. Collective Agreements with unionized employees were also amended accordingly to specifically recognize adoptive leave and supplemental maternity benefits for adoptive parents. Since this resolution was satisfactory to all parties, the complaints were closed as settled.

Employment (Denial)/ Sex (Male)

Allegation:

The complainant was a male person employed as a caretaker/cleaner on the night shift for a school division. He applied for a bulletined daytime cleaning position which requested female applicants only. When he was denied the position in favour of a female candidate with less seniority, he alleged discrimination in employment based on his sex.

Investigation:

The respondent acknowledged that, in agreement with the Union representing its employees, certain cleaner positions within the school division would be restricted for women only and that this position was so bulletined. They maintained that sex was a bona fide occupational requirement for this day position for reasons of public decency and to avoid placing staff in potentially compromising situations. The job duties of the day cleaner were to clean and maintain female washrooms, change rooms and shower rooms for students and female washrooms for staff. Washrooms and change rooms were in constant use during the day and to close them down several times a day for cleaning and maintenance would disrupt service and interfere with school activities and schedules for both students and teachers. In addition, although the washrooms had lockable doors, change and shower rooms had no partitions for privacy. Staff also expressed concerns that cleaning opposite sex washrooms could give rise to potential sexual assault charges if a female student's or teacher's privacy was inadvertently invaded.

Disposition:

The Commission concluded that, given the particular duties of this position, the requirement for females only was a bona fide occupational requirement. In addition, given the nature of the facilities and number of staff employed, accommodation of a male employee for this position would create an undue hardship for the Division. As a result, the complaint was dismissed.

Housing (Harassment)/ Ancestry (Native) and Family Status

Allegation:

The complainant, a Native student, rented a basement suite in Brandon for herself, her husband and their two children. She alleged that, during their brief tenancy, the landlord continually harassed her because of their ancestry and family status. In addition to constant complaints about the noise level of her children, the respondent was always pressing her to move out and on one occasion told her "when are you going to act like a white person?". The complainant alleged harassment in the provision of housing accommodation based on her ancestry and family status.

Investigation:

The investigation revealed that the basement suite was located directly below the landlord's personal living unit in a manner which would characterize the building as a "duplex" under the new *Human Rights Code*. This meant that *The Code* would not apply to the landlord's choice of tenant if the choice was based on ancestry or family status but, once the choice was made, the harassment provisions would still apply. With respect to the alleged racial harassment, there was no evidence that the conflict was race related. The investigation revealed that initially the tenancy went well until the respondent became concerned about the noise levels. Furthermore, a Native woman who had rented the suite previously, indicated she had had no difficulties with the respondent in the course of her tenancy. The respondent denied the alleged comment but stated she did admonish the complainant to "accept white society."

Disposition:

In the absence of other race related conduct or comment by the landlord, the one reference to the complainant accepting white society, although possibly offensive, of itself did not constitute "a course of abusive and unwelcome conduct or comment undertaken or made on the basis of . . . ancestry." As such, the complaint was dismissed for lack of jurisdiction.

Employment (Hiring)/ Sex (Female)

Allegation:

Two women who had previously worked as seasonal field labourers with a peat moss operation in Southern Manitoba, reapplied for employment at the beginning of the new season. Both were denied employment and both alleged their denial was based on their sex.

Investigation:

Investigation revealed that, although both women had satisfactory work records with the company, all of the employees hired for the season were male and some of them had never worked for the respondent previously. The respondent maintained that they could not hire women because the physical requirements of the job to lift and hoist bales of peat moss onto trucks was too physically demanding for women. However, no job related tests were conducted for any applicants, male or female, to determine their physical capacity to perform the job duties. Although there was some evidence that women, including the complainants, had been hired in the past, no woman was ever provided a non-traditional labourer's position as steady employment for more than one season.

Disposition:

Since the evidence confirmed the complainants were qualified for the position and were denied employment because of their sex, conciliation was attempted. The respondent agreed to rehire the complainants for the upcoming season and, upon completion of their probation period, they would be granted seniority (for the purpose of recall) retroactive to the date of their initial hiring. The respondent also provided a declaration of its commitment to hiring without regard to sex. Because the complainants were concerned about possible retaliation for having filed a human rights complaint, the respondent provided written assurances to both women against any such retaliation. Since all parties were satisfied with this resolution, the complaints were closed as settled.

Employment (Terms & Conditions)/Criminal Record

Allegation:

The complainant alleged that he was denied promotion to a position as Tax Assesser for a municipality because of a prior criminal record. His criminal record consisted of a conviction of fraud for reporting a false autopac claim for which he was fined. Prior to that, when he was eighteen, he shoplifted a record album for which he received a conditional discharge.

Investigation:

The respondent confirmed that, although the complainant was technically qualified for the position, he was not acceptable because he had a criminal record. They maintained that trustworthiness was an essential element of the position of Tax Assesser because of the requirement to enter people's homes and that the complainant's criminal record rendered him unsatisfactory for the position.

The investigation revealed that the complainant had worked for the respondent for approximately five (5) years in various positions, at least one of which required him to enter people's homes on a regular basis as part of his job. Throughout his five (5) year employment, he had no incident involving a breach of security.

Disposition:

The Commission considered the nature of the complainant's convictions, his age at the time the events occurred, the time elapsed since then, his apparent rehabilitation and his apparent qualifications for the promotion. In the circumstances, the respondent's denial of the promotion appeared to deny the complainant equality of opportunity without regard to his individual merits. The complaint was ultimately resolved through a policy change as well as a remedy to the individual complainant.

The respondent adopted a new policy which acknowledges that a criminal record, of itself, will not be a barrier to employment but that consideration will be given to such factors as nature and relevance of the offence, the length of time since the last conviction and the number of convictions. Only where there is a bona fide relationship between the nature of the record and the duties and responsibilities of the position, will employment be denied.

The complainant was ultimately employed as a Tax Assesser at the next available vacancy. He was also compensated for the differences in wages he would have earned up to the date of his promotion, and his seniority was adjusted accordingly.

Employment (Terms and Conditions, Termination)/Sex (Female)

Allegation:

The complainant was seasonally employed as a Qualified Heavy Equipment Operator for an isolated construction company. Shortly after she began her employment, she approached management about the fact that there were no separate toilet or shower facilities for men and women and that there were no locks on the doors. She was advised that there were no hotel rooms available in the area. She indicated her request for locks was responded to with laughter and she was told to figure it out for herself. She quit her employment because of the inadequate facilities and alleged discrimination based on her sex for the respondent's refusal to accommodate her privacy needs.

Investigation:

The investigation revealed that, when the complainant had been employed for the respondent previously, she had been accommodated in a hotel room. However, this time, all hotel rooms

were booked. As a result, the complainant was required to use the same wash car facilities as her male co-workers. Although a separate wash car was not provided for the complainant, the respondent maintained that the facilities were fully lockable and that, in any event, the complainant was allowed to use the office trailer which had locks on the facilities. The company from whom the trailer had been rented confirmed the trailer had locks when the rental contract was concluded. Furthermore, there was evidence that the complainant's termination of her employment was because of the long hours and general dirty camp conditions.

Disposition:

On a balance of probability, there was insufficient evidence to prove that the wash car facility lacked a locking mechanism. As a result, discriminatory terms and conditions of employment could not be established and the complaint was dismissed. However, the respondent was advised that when management is aware, or ought to be aware, that conditions of employment do not respect privacy and have an adverse impact on employees of one sex, the onus is on management to correct the situation.

Employment (Termination)/ Physical Disability (Skin Condition)

Allegation:

The complainant suffered from a skin condition called epiderma lossis bullosis, as a result of which the skin on his arms and hands blistered easily if heavily rubbed or scraped. The condition was not contagious. He applied for and obtained work as a refuse helper at a City garbage dump. After a month's employment, he was advised he was laid off due to his skin condition. He alleged discrimination in employment because of his physical disability.

Investigation:

The investigation revealed that the complainant was hired on a term basis to fill in for vacationing full-time employees. The term involved two phases of the operation: the first was to fill in for those workers who directed traffic on the landfill site; the second phase involved filling in for refuse helpers who drove the trucks and loaded the garbage. The respondent conceded that the complainant could have performed the first category of duties. However, they maintained that the lifting of garbage, even with protective gloves, would involve rubbing of the complainant's skin in a manner that would be harmful to his skin lesions. The complainant disputed this and maintained that, since the harm, if any, was nominal and to himself only, he should be allowed self-determination.

Disposition:

Before a full investigation was concluded, the respondent offered the complainant lost wages for the period of time he would have performed the first phase duties of the operation. As the complainant accepted these terms as sufficient settlement of his complaint, no determination was made with respect to whether he could have performed the duties of the full term. The complaint was closed as settled.

Services (Denial)/Source of Income (Social Assistance)

Allegation:

The complainant, a recipient of provincial social assistance, needed eye glasses to improve her vision. She noticed a half-price sale on eye glasses at the respondent's store and selected one of the sale item frames indicated. When she presented her social assistance benefits card for payment, she was advised by the clerk that store policy was to not extend sale prices to welfare recipients and that she would have to pay the full price. The complainant alleged she was denied a service available to the public because of her source of income.

Investigation:

The respondent denied any policy to refuse sale prices to recipients of social assistance but accepted responsibility for the complainant's denial of service by one of his employees.

Disposition:

The respondent offered the complainant a letter of apology and an invitation to purchase any frame at the sale price. The respondent also issued a memorandum to managers of all store outlets indicating that recipients of social assistance were to be extended all sale items at sale prices without discrimination. As all parties were satisfied with this resolution, the complaint was closed as settled.

Employment (Rehiring)/ Physical Disability (Sleep Apnea)

Allegation:

The complainant, who had been seasonally employed as a Motor Vehicle Inspector for sixteen (16) years, alleged he was taken off the eligibility list and denied re-employment because of a perceived disability (sleep apnea).

Investigation:

Medical evidence confirmed that the complainant had a sleep disorder known as sleep apnea which, until recently, had been disregarded by the respondent as not interfering with his good

work record. However, the complainant's condition worsened over the years and evidence confirmed he was falling asleep on the job on several occasions, some of which occurred while driving a vehicle or while inspecting a vehicle with co-workers. The employer had made efforts to accommodate the complainant's disability by making inquiries as to the availability and cost of a remedial device. However, the device was costly and no public funding was available to cover the cost in whole or in part. The respondent maintained that, since the remedial device would improve the overall quality of life for the complainant and was not required solely to accommodate the complainant in the workplace, it was not reasonable for the employer to fully incur the cost of such a purchase.

Disposition:

The Commission determined that the complainant's sleep apnea interfered with the satisfactory performance of his job duties in a manner which created a safety risk not only to himself, but also to co-workers and the general public. It was also determined that the employer had made reasonable efforts to accommodate the complainant. In the circumstances, the complaint was therefore dismissed.

It should be noted that, at the time, in addition to the lack of public funding for the remedial device, there were also no medical facilities available in Manitoba for the treatment of sleep apnea. Since then, the Province has announced a program to cover travel costs for out-of-province medical care for persons suffering from sleep apnea.

Housing (Denial)/Marital and Family Status (Separating)

Allegation:

The complainant and his spouse were married with four (4) teenage children and were in the process of separating. They agreed to jointly rent an apartment during the separation process where either of them could stay for two week periods when they needed to be alone. They viewed a suite which was satisfactory and indicated they wished to rent it. The landlord asked whether they had children. They advised him of their teenage sons but explained their situation and the fact that their sons would not be living in the apartment. The landlord advised them that they could not rent the suite as he did not like their "family situation." The couple alleged they were denied rental accommodations because of their marital and family status.

Investigation:

The investigation confirmed that the complainants were refused rental of the apartment because of their "family situation" after the landlord learned they planned to alternate living in the apartment with living in their house. The respondent indicated this kind of arrangement was not "normal" and he was concerned about other tenants' reactions and the possibility of fighting in the hallway. However, these concerns were not based on any reference checks as to the applicants' qualifications as tenants. The respondent also maintained that refusing to rent to separating spouses did not constitute discrimination based on marital or family status.

Disposition:

The Commission acknowledged that, in today's society, families have many different kinds of situations or arrangements such as families in transition, parents who live separately but share custody of their children, adult children who provide care for their elderly parents or other relatives, step or blended families, etc. Given this reality, the Commission interpreted marital and family status protections from discrimination as extending to spouses in the process of separation and attempted to mediate settlement of this complaint. Although conciliation of the complaint was not successful, in terms of a quantifiable remedy to the complainant, the complaint process itself had an educational impact on the respondent which was the complainants' primary objective. In the particular circumstances, a Board of Adjudication was not appointed and the complaint was closed as unresolved.

Services (Right to Vote)/ Nationality (Citizenship)

Allegation:

The complainant was born in the United States and maintained his U.S. citizenship. Although he did not have Canadian citizenship, he had permanent Canadian residency status and owned property in a rural municipality where he paid taxes. When he wished to have his name placed on the voters' list for a local municipal election, he was advised he was ineligible to vote because he was not a Canadian citizen.

Investigation:

The investigation revealed that Section 5(1) of *The Local Authorities Election Act* of Manitoba states that the right to vote in elections of local authorities is restricted to Canadian citizens who are actually resident in the local authority district. Although the complainant was actually resident in the district, he was ineligible for reasons of his citizenship.

Disposition:

The Commission viewed citizenship as encompassed by the term "nationality" and as such protected as a prohibited ground of discrimination. In the alternative, they interpreted Section 3(1) of *The Act* broadly to prohibit unreasonable

discrimination based on any form of group classification including citizenship. In determining whether the disqualification of non-citizens was unreasonable or whether it was justified in the particular circumstances, the Commission considered that extending only to citizens the privilege of participating in the structure or processes of government, is common among free and democratic societies. The Commission also noted that all the provinces in Canada, with the exception of New Brunswick, use Canadian citizenship as a necessary prerequisite for voting in municipal elections. It was, therefore, determined that the denial of voting privileges to non-citizens was not "without reasonable cause" and not in violation of *The Human Rights Act*. The complaint was dismissed accordingly.

Employment (Re-employment)/ Physical Handicap (Asthma)

Allegation:

The complainant, who was diagnosed as having asthma, had been employed seasonally with a construction company as a labourer for four (4) years. During one season, he was off on sick leave for two weeks because of breathing difficulties but at the end of the season, was laid off as usual with the understanding that he would be returning in the spring. Prior to the recall, he was notified by the company that they had concerns about his breathing and that he was to see a specialist. The complainant was later advised by the company that he would not be recalled because of his medical condition. He alleged that the company denied him continued employment because of his physical handicap and that they failed to accommodate his medical condition.

Investigation:

The respondent company denied they discriminated against the complainant and maintained they were unable to accommodate the complainant's asthma. The investigation revealed that the respondent had made some effort at the outset to accommodate the complainant by asking him to wear a mask to cut down on the dust and fumes he was exposed to. However, following an assessment by a specialist which indicated the complainant could not work around dust and fumes, the company decided they could not accommodate the complainant in his position as a labourer. No effort was made to offer the complainant alternative work within the company. The investigation revealed, however, that there was an available position in the company for which the complainant was qualified and to which he could be transferred without risk to his health.

Disposition:

Since there was evidence that the company did not make reasonable efforts to accommodate the complainant's disability, conciliation was initiated. Following more recent medical reports which showed no risk to the complainant's health, the complaint was ultimately settled to the satisfaction of both parties when the complainant was reinstated without loss of seniority.

Services/Reprisal

Allegation:

The complainant was employed as a waitress in a restaurant. She had terminated her employment and filed a human rights complaint against her manager alleging sexual harassment. The complaint was ultimately dismissed for insufficient evidence. She subsequently went to the restaurant with a friend for coffee. She was approached by the manager who told her she was not to return to the restaurant as she was barred from service. The complainant alleged she was denied service in retaliation for having filed a human rights complaint.

Investigation:

The respondent acknowledged that the complainant had not created a disturbance of any kind. He indicated he had been upset by the complaint and did not want the complainant in his restaurant.

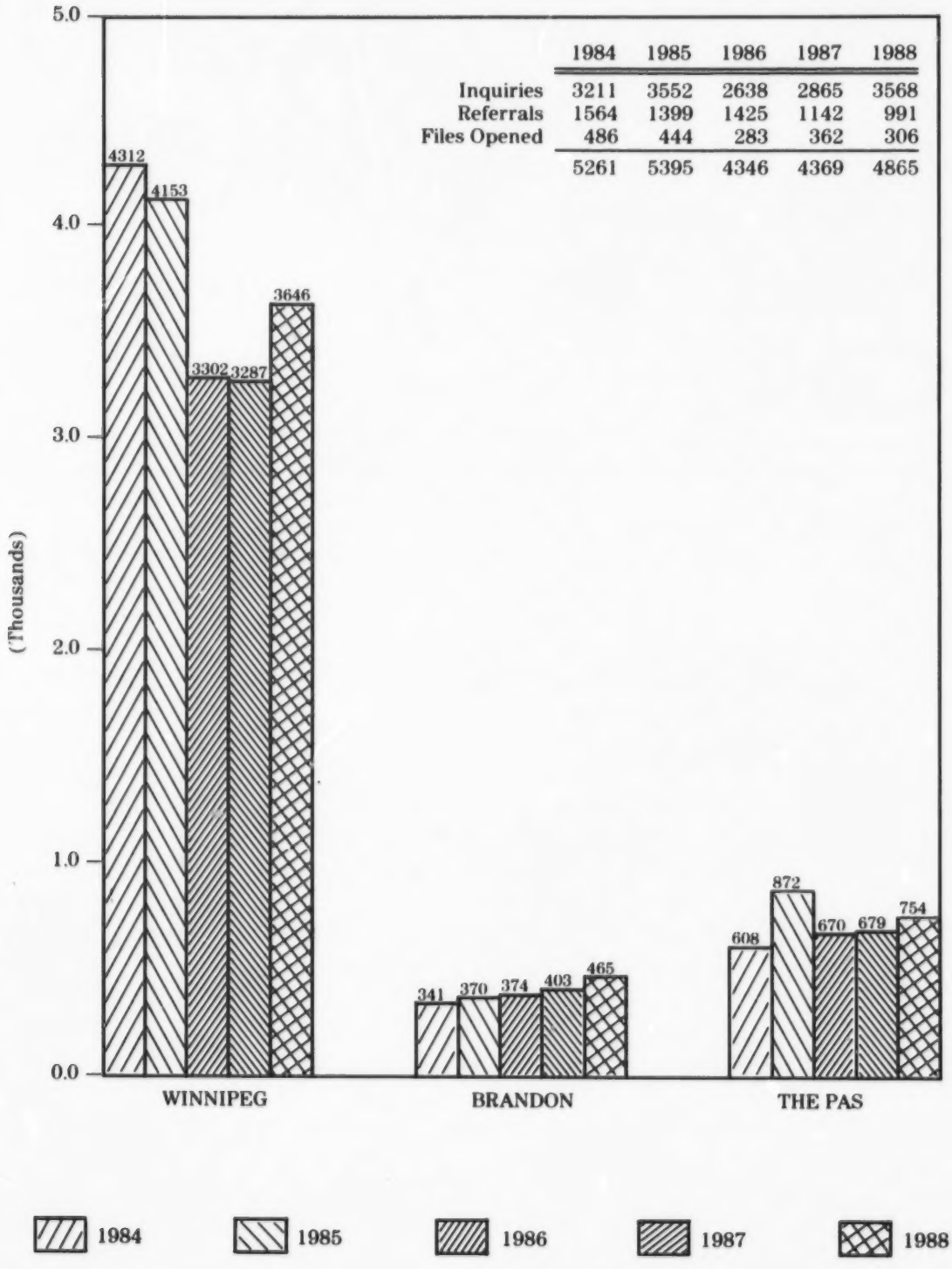
Disposition:

To resolve the complaint, the respondent acknowledged the complainant's right to service without retaliation for having exercised a legal right to file a complaint. He apologized to her for the incident and indicated in future, she would be entitled to the same service available to all customers. As both parties were satisfied with this resolution, the complaint was closed as settled.

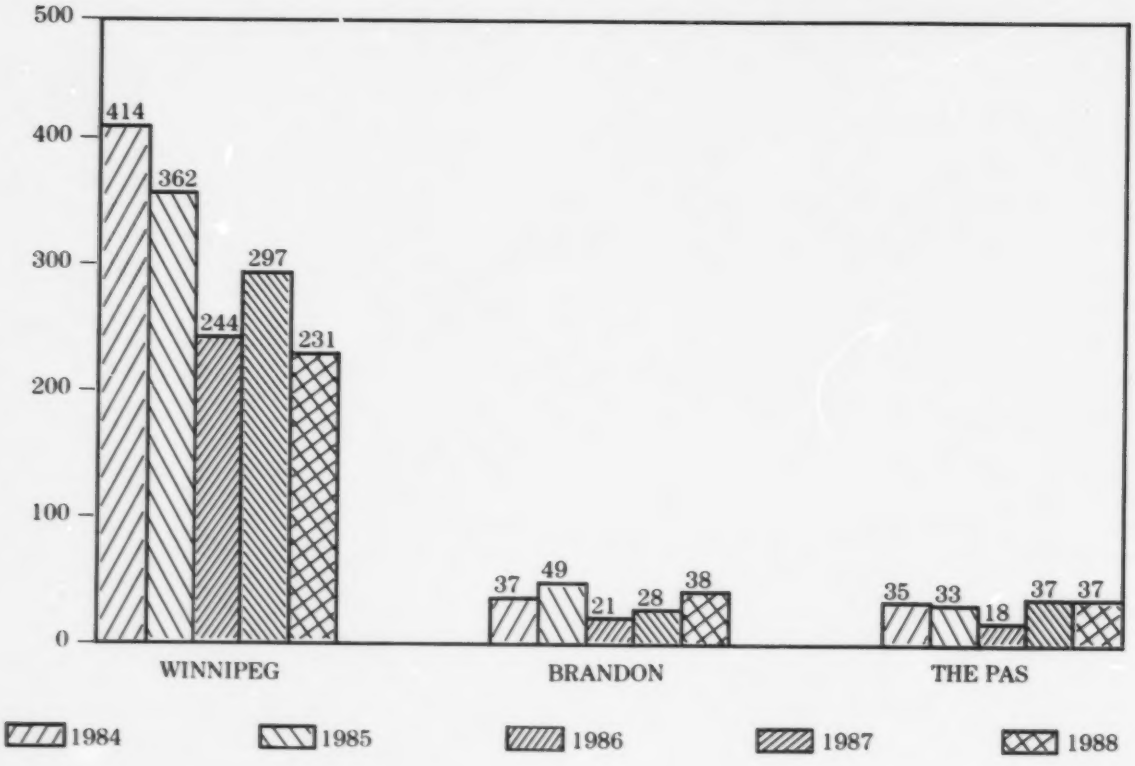
1. INTAKE STATISTICS

TOTAL INTAKE CONTACTS BY REGION 1984-1988

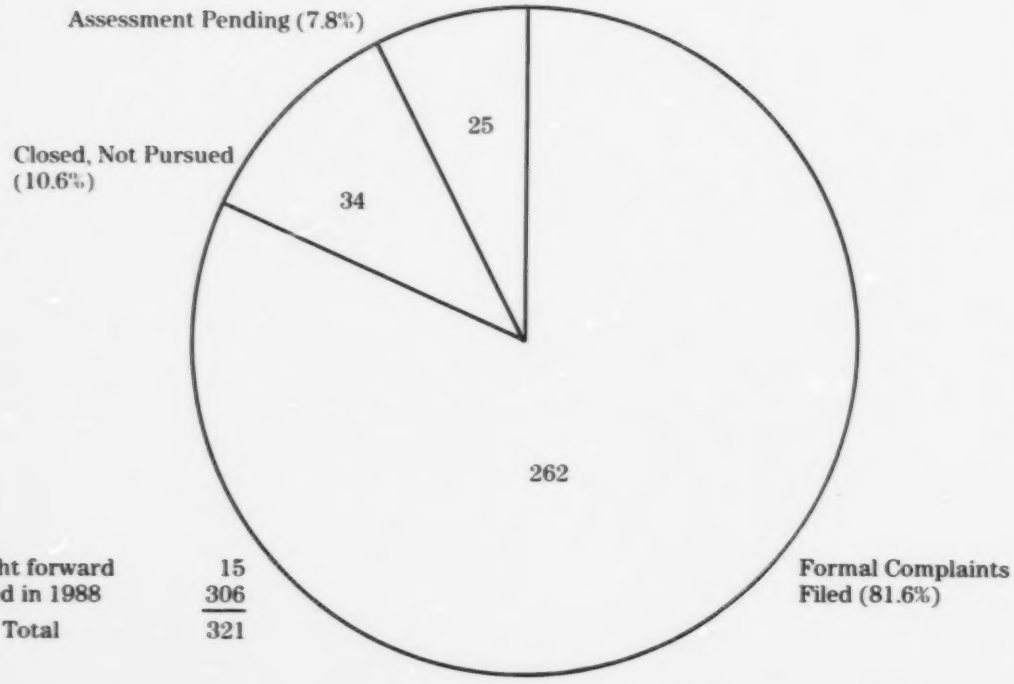
	1984	1985	1986	1987	1988
Inquiries	3211	3552	2638	2865	3568
Referrals	1564	1399	1425	1142	991
Files Opened	486	444	283	362	306
	5261	5395	4346	4369	4865



POSSIBLE COMPLAINT FILES OPENED BY REGION 1984-1988



PRELIMINARY ASSESSMENT OF FILES OPENED 1988



Brought forward	15
Opened in 1988	306
Total	321

DISTRIBUTION OF FILES OPENED BY LOCATION 1988

Ashern	1
Beausejour	1
Bowsman	1
Brandon	28
Churchill	1
Dauphin	3
Douglas	2
Elkhorn	1
Flin Flon	1
Headingley	2
Lac du Bonnet	1
Leaf Rapids	3
Lynn Lake	1
Morden	1
Neepawa	1
Pine Falls	1
Portage la Prairie	3
Roblin	1
Sundance	2
Swan River	1
The Pas	16
Thompson	11
Virden	1
Winkler	1
Winnipeg	221
Total	306

Note: Location is designated as the community in which the alleged contravention occurred.

2. COMPLIANCE STATISTICS

Note: (a) Many complaints are based on more than one ground of discrimination. This will affect the totals in some of the following tables.

(b) The Statutory Category "Other" includes contracts and purchase of property.

(c) The Grounds Category "Other" includes group factors not specifically cited in The Code.

(d) The figures for 1985-1987 in the table "Formal Complaints Filed by Grounds" have been adjusted to reflect the new Human Rights Code.

FORMAL COMPLAINTS FILED BY GROUNDS AND STATUTORY CATEGORY 1988

Statutory Category	Total Files	Ancestry	Nat/Ethnic Origin	Marital/Fam Status	Disability	Sex	Age	Religion	Political Belief	Source of Income	Sexual Orientation	Other
Employment	158	30	10	13	38	45	20	4	6	1	7	13
Housing	24	3	0	12	3	2	5	1	0	6	0	2
Services	69	14	7	11	16	5	9	3	1	3	3	7
Other	11	2	1	1	0	2	0	0	0	1	0	2
	262	49	18	37	57	54	34	8	7	11	10	24

FORMAL COMPLAINTS FILED BY GROUNDS 1985-1988

GROUNDS	1985		1986		1987		1988	
Ancestry	87	23%	60	24%	79	26%	49	19%
National/ethnic origin	78	21%	48	20%	71	24%	18	7%
Marital/family status	68	18%	35	14%	55	18%	37	14%
Disability	79	21%	45	18%	72	24%	57	22%
Sex	96	26%	67	27%	60	20%	54	21%
Age	49	13%	39	16%	39	13%	34	13%
Religion	18	5%	9	4%	4	1%	8	3%
Political Belief	0	0%	2	1%	3	1%	7	3%
Source of Income	26	7%	17	7%	20	7%	11	4%
Sexual Orientation	—		—		—		10	4%
Other	14	4%	14	6%	9	3%	24	9%
Total Complaints Filed	374	100%	245	100%	302	100%	262	100%

FORMAL COMPLAINTS FILED BY STATUTORY CATEGORY 1985-1988

STATUTORY CATEGORY	1985		1986		1987		1988	
Employment	224	60%	159	65%	175	58%	158	60%
Housing	62	17%	43	18%	45	15%	24	9%
Services	73	20%	35	14%	71	24%	69	26%
Other	15	4%	8	3%	11	4%	11	4%
Total	374	100%	245	100%	302	100%	262	100%

Definitions

Disposition of Formal Complaints

Dismissed:
Where the evidence is insufficient to substantiate the allegation; or there is no contravention of *The Code*; or the complaint is frivolous or vexatious.

Settled:
Where the terms of settlement are satisfactory to both the Complainant and Respondent.

Unresolved:
Where a reasonable settlement offer is made by the Respondent but rejected by the Complainant.

Other:
Includes a complaint that has been withdrawn or abandoned by the Complainant, or terminated for some other reason.

Referred:
Where a complaint is not settled, dismissed or disposed of in any other way indicated above, the Commission may request that the Minister appoint a Board of Adjudication to hear and decide the matter; or recommend that the Minister commence a prosecution.

DISPOSITION OF FORMAL COMPLAINTS BY STATUTORY CATEGORY 1988

STATUTORY CATEGORY	DISMISSED		SETTLED		UNRESOLVED		REFERRED*		OTHER		TOTAL (100%)
	#	%	#	%	#	%	#	%	#	%	
Employment	77	55%	18	13%	2	1%	0	0%	42	30%	139
Housing	17	41%	7	17%	1	2%	0	0%	16	39%	41
Services	29	50%	14	24%	0	0%	1	2%	14	24%	58
Other	7	58%	2	17%	0	0%	0	0%	3	25%	12

DISPOSITION OF FORMAL COMPLAINTS BY GROUNDS 1988

GROUNDS	DISMISSED		SETTLED		UNRESOLVED		REFERRED*		OTHER		TOTAL (100%)
	#	%	#	%	#	%	#	%	#	%	
Ancestry	37	64%	6	10%	0	0%	0	0%	15	26%	58
National/Ethnic Origin	20	61%	5	15%	0	0%	1	3%	7	21%	33
Marital/Family Status	22	43%	12	24%	1	2%	0	0%	16	31%	51
Disability	31	61%	8	16%	0	0%	0	0%	12	24%	51
Sex	21	39%	9	17%	2	4%	1	2%	21	39%	54
Age	14	42%	13	39%	0	0%	1	3%	5	15%	33
Religion	4	100%	0	0%	0	0%	0	0%	0	0%	4
Political Belief	5	83%	0	0%	0	0%	0	0%	1	17%	6
Source of Income	4	33%	3	25%	0	0%	0	0%	5	42%	12
Sexual Orientation	1	50%	0	0%	0	0%	0	0%	1	50%	2
Other	3	25%	2	17%	0	0%	0	0%	7	58%	12

DISPOSITION OF FORMAL COMPLAINTS 1984-1988

DISPOSITION	1984		1985		1986		1987		1988	
	#	%	#	%	#	%	#	%	#	%
Dismissed	153	60.5%	125	47.9%	173	60.1%	119	50.0%	130	52.0%
Settled	68	26.9%	62	23.8%	39	13.5%	39	16.4%	41	16.4%
Unresolved	0	0.0%	7	2.7%	4	1.4%	2	0.8%	3	1.2%
Referred*	18	7.1%	20	7.7%	10	3.5%	13	5.5%	1	0.4%
Other	14	5.5%	47	18.0%	62	21.5%	65	27.3%	75	30.0%
Total	253	100.0%	261	100.0%	288	100.0%	238	100.0%	250	100.0%

*See Definitions, above and Summary Report of Legal Proceedings, Page 41.

ADVISORY OPINIONS — 1988

Applications Received		30
Opinion Issued:		
Special Program	1	
Bona Fide & Reasonable Requirement	4	
Reasonable Accommodation	0	
Other	0	
No Opinion Issued	2	
Total Files Closed		7
Applications Pending		23

Note: In some cases more than one basis for the exception was cited. Only one is recorded for statistical purposes. (See Summaries of Advisory Opinions issued, Page 20.)

YEAR END COMPLIANCE STATUS REPORT FOR 1988

	Complaints	Advisory Opinions	Total Files
Brought forward	366	0	366
New files	262	30	292
	628	30	658
Files closed	250	7	257
Open files	378	23	401

Year End Status of Open Files:

Complaint files:

In backlog	120
In investigation	230
In conciliation	26
Pending closure	2
	378

Advisory opinion files:

In backlog	15
In preparation	8
Pending closure	0
	23

3. LEGAL PROCEEDINGS STATISTICS

SUMMARY REPORT OF LEGAL PROCEEDINGS — 1988

Carried over from 1987	
Complaints referred to adjudication/prosecution	26
Other proceedings	4
Total	30
Proceedings initiated in 1988	
Complaints referred to adjudication/prosecution	1
Other proceedings	0
Total	1
Dispositions — 1988	
No hearing, resolved	4
No hearing, withdrawn/unresolved	2
Prosecution, conviction	1
Other	2
Total	9
Matters outstanding at year end	
Complaints pending adjudication	11
Complaints before Court of Queen's Bench	3
Complaints before Court of Appeal	0
Appeal to the Supreme Court of Canada	5
Other proceedings in progress	3
Total	22

4. SPEAKER SERVICE STATISTICS

TOTAL SPEAKER SERVICE ACTIVITY 1985-1988

	1985	1986	1987	1988
Speaking Engagements	125*	89	106	113
Consultations	7	5	13	12
Outreach Contacts	100	110	100	67
Information Booths	1	5	5	2
Total	233	209	224	194

*This includes 20 speaking engagements by volunteers under the Volunteer Program which was discontinued in 1985 due to insufficient resources.

APPENDIX A

The Manitoba Human Rights Commission Publications List

Sexual Harassment: Does It Affect Your Workplace?/Does It Affect You? (Brochure)*

— Contains information for both employers and employees on what constitutes sexual harassment and what can be done about it.

Guidelines for Taxicab Owner/ Operators and Disabled Passengers (Brochure)*

— Sets out the rights and responsibilities of cab drivers serving taxi customers or potential customers with physical disabilities. Also contains tips to drivers for providing effective, quality service to disabled customers.

The Manitoba Human Rights Commission Annual Report

— Contains information on the Commission's structure and function, major activities of the past year, case examples, statistical highlights.

Guidelines: Housing (to be revised)

— Sets out the housing provisions of the Manitoba Human Rights Code. Of interest to tenants, owners, apartment managers and rental agencies.

Guidelines: Pre-Employment Inquiries*

— Outlines the pre-employment provisions of the Code. Of interest to employers, personnel departments, employment agencies, and persons seeking employment.

A Guide for Respondents*

— Outlines the complaint process and the rights and responsibilities of employers, property owners, rental agents, business proprietors, etc. under the Manitoba Human Rights Code.

Advisory Opinions* (Information Sheet)

— Provides general information on when an Advisory Opinion should be requested and the procedures that are followed.

Fact Sheets (Bilingual)

— General information on prohibited discrimination under The Human Rights Code and specifically discrimination because of pregnancy, disability, reasonable accommodation and harassment.

*(available in French or English)

Audio-Visual Materials

"The Eye of the Storm", New York: American Broadcasting Companies Inc., 1970 (28 min.)

16 mm. film

Documentary about a 3rd grade teacher who uses eye-colour as a basis to teach students the realities of prejudice and discrimination.

A list of discussion questions has been developed to accompany this film.

"Buttonville", The Alberta Human Rights Commission, 1979. (25 min.)

16mm. film

Cartoon story about plant people who are all required to wear identifying buttons. When one of the plant people loses his button the whole town learns a lesson about labelling.

A Teacher's Guide is also available which includes various learning activities for Grades 1-3 and Grades 4-6.

"A Different Approach", The South Bay Mayor's Committee for Employment of the Handicapped, 1978 (20 min.)

16mm. film

Designed to dispel myths and prejudices about employment of the handicapped, the film contains a series of comedy vignettes presenting handicapped individuals performing various job functions.

"The Workplace Hustle", Clark Communications, 1980. (30 min.)

16mm. film

A group of women and a group of men discuss sexual harassment in the workplace. Lin Farley, author of *Sexual Shakedown,* talks about sexual harassment, why it happens and the effect it has on its victims.

A list of discussion questions has been developed to accompany this film.

"See What I Say", Michigan Women Filmmakers, 1981. (25 min.)

16mm. film

The deaf discuss how American Sign Language enables them to communicate. A concert for the deaf by Holly Near illustrates the expressiveness and beauty of the language.

"Human Rights for the Deaf", 1982 (29 min.)

Video-tape 3/4 in. format.

— A presentation about human rights made to the Kiwanis Centre for the Deaf, which was video-taped by Channel 13. It includes simultaneous translation in American Sign Language (ASL).

"The Charter and You"

Video-tape 3/4 in. format.

— This 60 minute video-tape, prepared by Confederation College of Applied Arts and Technology for the Department of the Secretary of State, Canada, is accompanied by a Reference Guide and Teacher's Guide. It is intended to be an introduction to *The Charter's* provisions and how they impact upon individual Canadians in their every-day affairs.

"No One Can Take Them Away", 1987 (14 min.)

Videotape VHS and Beta formats available

— This video was produced for schools by the Canadian Red Cross Society. It introduces the topic of human rights and includes information on the history of human rights, the Universal Declaration of Human Rights and landmark events in Canadian human rights history. The film also offers practical suggestions for action on human rights in Canada and the world.

"Human Rights, Human Wrongs", 1987 (30 min.)

Video-tape VHS format

— This video, directed at young people between nine and thirteen and their parents, features Rick Hansen who tells how his human rights are affected by his disability. Native Canadians, girls, women and members of ethnic minorities relate their own experiences with discrimination. The causes and consequences of intolerance are examined through personal interviews, dramatizations and audience participation. The video offers solid strategies for fighting discrimination and creating, instead, a proud record of human rights.

"A Class Divided", Yale University Films for Frontline, 1985 (58 min.)

Video-tape VHS format

— This film is a follow-up to "The Eye of the Storm". The teacher who first split her class in two according to eye colour, re-unites with several of her former students at the school reunion. The discussion between the teacher and her grown students about the long lasting effects of that exercise makes for very interesting viewing.

"What You Should Know About the Human Rights Act" (30 min.)

Video-tape VHS and Beta formats available.

— Although this video-tape refers to The Human Rights Act, the basic content is still relevant under the new Human Rights Code. The tape is divided into three segments, each containing the same information — an explanation about the Commission, the protection offered under the legislation and information pertaining to complaints. Segment 1 is in the Cree language. Segment 2 is in the Island Lake dialect and Segment 3 is in Saulteaux (Ojibway) language.

"Trade Secrets: Blue Collar Women Speak Out," 1986 (23 min.)

Video-tape VHS format.

— This video is excellent for screening to women in pre-technology and pre-trades programs, at high school career days, and to business audiences. Four women — an ironworker, a welder, a sprinklerfitter and an electrician, reveal how their lives changed when they entered traditionally male trades. They tell how they overcame the physical and personal obstacles to find satisfaction in their trades, greater financial power and a new sense of identity as journeywomen.

"AIDS: The Workplace Facts," 1988 (20 min.)

Video-tape VHS format.

— This informative documentary produced by the Canadian Labour Congress and the Canadian Public Health Association, focuses on AIDS and workplace concerns. It reviews the medical evidence that AIDS/HIV infection is *not* transmitted by casual contact with a person who is infected with the virus. Protections from discrimination for persons with AIDS are discussed.

APPENDIX B

MHRC USE ONLY/
RÉSERVÉ À LA CDPM
Rec'd by:/Reçu par:

Date: _____

Complaint of Discrimination Under The Human Rights Code (Manitoba)

Discrimination — Plainte portée en vertu du code des droits de la personne (Manitoba)

File Number:/
N° de dossier :

Page ____ of ____/
_____ page de _____

Name and Address of the Complainant/
Nom et adresse du plaignant

Name and Address of the Respondent/
Nom et adresse de l'intimé

Name and Address of any person or class of persons discriminated against in addition to or other than the Complainant(s)/
Nom et adresse de toute personne ou tout groupe de personnes au nom de qui ou avec qui le plaignant a porté plainte

The Complainant alleges that in the Province of Manitoba/
Le plaignant allègue que, dans la province du Manitoba

On or about the/
le, ou vers le _____ day of/
jour de _____, 19_____;

OR/OU

on a continuing basis
up to and including the/
de façon permanente
jusqu'au _____ day of/
jour de _____, 19_____

that the Respondent(s) did contravene section(s)/
l'(les) intimé(s) a(ont) violé les dispositions de l'(des) article(s) _____ of **The Human Rights Code**, or any other applicable section as follows:/
du Code des droits de la personne, ou tout autre(s) article(s) qui s'y rapporte(nt), de la façon suivante:

SAMPLE

I certify that the foregoing information is correct to the best of my knowledge and I believe that the events described above constitute a contravention of **The Human Rights Code**./

Je certifie par la présente que les renseignements susmentionnés sont, en autant que je sache, exacts et complets et que les faits cités constituent une violation **du Code des droits de la personne.**

City/Town Complaint Signed At/ Nom de la ville ou de la municipalité où la plainte a été portée	Date Day/ jour	Month/ mois	Year/ année	Signature of Complainant/ Signature du plaignant

APPENDIX C

Manitoba Human Rights Commission

Public Education Policy

The Manitoba Human Rights Commission believes that discrimination cannot be eliminated from the social environment through legislative sanctions alone. As stated in the preamble to *The Human Rights Code*, "much discrimination is rooted in fear and ignorance and education is essential to its eradication . . ." *The Code* then goes on to require the Commission to develop, promote and conduct educational programs which are designed to eliminate discrimination and which promote understanding of the rights and responsibilities contained within *The Code*. In addition, the Supreme Court of Canada has, in a number of decisions, emphasized the role of human rights commissions as agents of social change through education.

The resources available to administer *The Code* are limited. In addition to its responsibility to deliver educational programs, the Commission must also investigate and conciliate complaints from persons who believe that they have been discriminated against; and the Commission must issue advisory opinions to those who are attempting to ensure that their business practices are in compliance with *The Code*. It is therefore essential that resources are effectively utilized by establishing appropriate priorities. To this end, the Manitoba Human Rights Commission has adopted the following policy for 1989/90.

Policy:

Recognizing that the Compliance unit is already over-extended and that there is a backlog of uninvestigated complaints, priority will be given to those activities which are designed to prevent discrimination rather than those activities which tend to encourage new complaints. The Commission will, however, continue to provide information to those who are most likely to experience discriminatory treatment to ensure that they are aware of the remedies available to them under *The Code*.

Through a program of business education, the Commission will endeavour to assist business in the development of practices and policies which are non-discriminatory and which will reduce the likelihood of complaints of discrimination arising out of misunderstandings. Preventative programs will also include those which promote the teaching of human rights in Manitoba schools and those which promote the initiation of special programs designed to eliminate barriers to equality and to eradicate the effects of historic and systemic discrimination.

Based on an impressionistic assessment of the current social and economic environment, the Commission has identified the following groups as urgently requiring information about human rights protections and remedies:

a) **Aboriginal People** — It is evident that Native people continue to face discrimination in housing, employment, and essential services in Manitoba. Newspaper accounts, studies, and other observations indicate that the incidence of discriminatory treatment is not reflected in the numbers of complaints filed with the Commission by Native persons. Efforts must be made to ensure that the protections and remedies of The Code are available to Native persons who encounter discrimination.

b) **Persons who may be perceived to be at risk of contact with AIDS** — Persons who are homosexual, Haitian, or hemophiliac have often been subjected to unreasonable discrimination because of stereotypes and prejudice. Now, misinformation and irrational fears about AIDS can feed the existing prejudice and increase the likelihood of discriminatory treatment. Persons who are discriminated against for these reasons may be somewhat aware of the prohibitions against discrimination based on sexual orientation, ancestry, and disability; however, it is unlikely that they are adequately aware of the prohibitions against discrimination which is based on their actual or assumed exposure to AIDS.

c) **Persons for whom access to information and services is restricted by barriers resulting from language or disability** — The services of the Commission must be equally accessible to persons with visual and hearing impairments and to new immigrants whose first language is neither English nor French. Currently, information regarding the rights and protections of *The Code* is available primarily through printed materials in Manitoba's official languages only; difficulty with verbal communication may deter new immigrants or hearing impaired persons from exercising their right to file complaints when they have been the subject of discriminatory treatment. The Commission has an obligation to honour the spirit and requirements of *The Human Rights Code* by accommodating the special needs of these groups.

While the Commission has established these priorities for public education programs at this time, it is aware of its obligation to ensure that human rights information is available to all residents of Manitoba regardless of status or geographical location.

In order to obtain the maximum benefit of limited resources, an effort will be made to encourage and support community groups who are able and willing to take the initiative in the delivery of human rights education.

This policy will be reviewed on an annual basis and the results of the review will be reported in the Commission's annual report.